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Supreme Court, U.S.
FILED

No. 03-1430 APR 12 2004

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

BARBARA SIBLEY,

Respondent.

On Petition for Writ of Certiorari to the Florida Third District Court of Appeal

Petition for Writ of Certiorari

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QUESTIONS PRESENTED FOR REVIEW

First, whether the Florida Third District Court of Appeal-approved procedure for stripping Father of custody of his minor children and terminating all Father's parental rights violated procedural due process guarantees.

Second, whether the Florida Third District Court of Appeal-approved evidence for stripping Father of the custody of his minor children and terminating all Father's parental rights violated substantive due process guarantees.

Third, whether Florida Statute §61.30(12(c) violates equal protection guarantees by denying to Father's child of his second marriage equal support from Father to that of Father's children from his first marriage.

Fourth, whether setting Father's child support obligations at a level which bears no relationship to his ability to pay is arbitrary or without reasonable relation to some purpose within the competency of the state to effect.

Fifth, whether the Supremacy Clause was violated when Father (i) was prohibited by a Florida State Court judge from suing in federal court and (ii) was sanctioned for failing to appear for a state court hearing when he was appearing in federal court pursuant to a subpoena at the same time in a different state.

Last, whether the Florida Third District Court of Appeal procedure approved by the Florida Supreme Court of issuing opinions *per curiam* without written decision violates Father's equal protection rights.

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PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA THIRD DISTRICT COURT OF APPEAL

Petitioner, Montgomery Blair Sibley ("Father"), prays that a writ of certiorari issue to review the judgment and opinion of the Florida Third District Court of Appeal entered on December 3, 2003, as review by the Florida Supreme Court is prohibited by the Florida Rules of Appellate Procedure as detailed in Point VI, *supra*.

OPINIONS BELOW

The May 14, 1998, order permitting Father to relocate from Florida with his minor children of the Florida Circuit Court in and for Miami-Dade County, Florida is reprinted in the appendix hereto, *Appendix-4*.

The December 10, 2001, order temporarily changing primary physical custody of the minor children from Father to Respondent, Barbara Sibley ("Mother") and prohibiting the removal of the minor children to Washington, D.C. of the Florida Circuit Court in and for Miami-Dade County, Florida is reprinted in the appendix hereto, *Appendix-6*.

The March 27, 2002, decision of the Florida Third District Court of Appeal is reprinted in the appendix hereto, *Appendix-13*.

The August 5, 2002, orders on child support of the Florida Circuit Court in and for Miami-Dade County, Florida are reprinted in the appendix hereto, *Appendix-15 and 23*.

The August 9, 2002, order terminating Father's rights in his minor children of the Florida Circuit Court in and for Miami-Dade County, Florida is reprinted in the appendix hereto, *Appendix-28*.

The December 3, 2003, order denying *per curiam* without written decision of the Florida Third District Court of Appeal is reprinted in the appendix hereto, *Appendix-35*.

The February 12, 2004, opinion of the Florida Third District Court of Appeal denying Father's motion for rehearing, rehearing *en banc*, reconsideration and for a written decision is reprinted in the appendix hereto, *Appendix-40*.

JURISDICTION

The order of the Florida Third District Court of Appeal was entered on December 3, 2003, affirming, without opinion and *per curiam*, the interlocutory and final orders of the Florida Family Court in *Sibley v. Sibley*, Case No.: 94-18177 FC. The order of the Florida Third District Court of Appeal denying Father's motion for rehearing, rehearing *en banc*, reconsideration and for a written decision was entered on February 12, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

(Set-out in Appendix)

U.S. Constitution, 14th Amendment, Section 1
U.S. Constitution, Article, VI, Clause 2
Florida Statute, §61.16
Florida Statute, §61.30(12)

STATEMENT OF THE CASE

In September 1994, Father and Respondent ("Mother") were divorced in the State of Florida. Father was designated the "primary residential custodian" of the three minor children of that marriage and after the division of property neither paid nor received child support or alimony. For the ensuing six years from 1994 to September 2000 Father, while living in Florida, remained the "primary residential custodian" of the three children and at all times was a nurturing father against whom no complaint was lodged.

In 1996, Father re-married and a child of that marriage was born in December 1997. In 1998, anticipating a relocation to the Washington, D.C. area, Father received an order from the Florida Family Court permitting such a relocation upon the sole condition of 45-day prior notice to Mother upon whom was placed the burden of securing a change in custody. *Appendix-4*.

In the spring of 2000, pursuant to the 1998 order, Father provided notice to Mother of his intent to relocate to the District of Columbia area with the minor children.

In flagrant disregard of his custody rights and in violation of the relevant court orders on custody and visitation, Mother refused to return the children to Father in July 2000 at the conclusion of their court-ordered summer vacation with her. Instead, Mother moved for a temporary change in custody in the Florida Family Court on July 27, 2000, solely upon the grounds that Father had abandoned the children. Significantly, Mother received no order permitting her to refuse to return the minor children to Father. Father vigorously sought an immediate hearing on her refusal to return the children to him from the Florida Family Court but that Court refused to conduct such a hearing. By such refusal, that court *de facto* transferred custody without the requisite procedureal or substantive due process safeguards of notice and an opportunity to be heard. Father's

repeated petitions for mandamus to the Florida Third District Court of Appeal to require a hearing and expedited determination of the custody issue were denied.

Seventeen months later, after hearings commenced in October 2000 and continued to December 2000, September 2001 and October 2001, the Florida Family Court finally entered on December 10, 2001, *verbatim* the proposed order submitted by Mother temporarily changing custody to Mother and – without notice that such relief was requested or being considered by the Court or permitting Father to be heard – prohibiting Father from seeing his children stating: "No visitation shall take place between the Former Husband and the minor children until therapy takes place". *Appendix-11.* Father has not been permitted to see his children since that time and in the interim two of the three children have reached the age of majority.

Father appealed the order on temporary custody to the Florida Third District Court of Appeal which rendered its decision based solely upon the lack of a proper record refusing to Father a hearing on his Florida Statutory right to have Mother bear the cost of the record on appeal. *Appendix-13.*

Twenty months later, traveling upon Mother's motion for sole parental responsibility, on August 5, 2002, Mother's motion to change custody and strip Father of all his parental rights was finally determined by the Florida Family Court, which refused to recognize or enforce Father's rights in his minor children. Additionally, again adopting *verbatim* Mother's counsel's proposed orders on child support and notwithstanding both the needs of Father's son born of his second marriage and Father's current economic condition ($36,000/year; negative net worth) and that of his former wife ($250,000/year; $1,000,000+ net worth) – the Florida Family Court ordered that Father pay to his former wife $100,000 in arrearages of child support calculated at $4,000 per month from July 2000, $4,000/month going

forward plus tuition to private schools and college for the three children in the amount of $175,000 for a total of $275,000. *Appendix 15 and 23.*

Father, on August 27, 2002, appealed twenty-one interlocutory orders and the August 2002 final orders of the Florida Family Court to the Third District Court of Appeal. After refusing to Father his request for leave to file a brief 20 pages in excess of the brief limitation – and thereby precluding Father from raising certain issues on appeal – oral argument on the appeal was finally held over a year later on October 8, 2003. Initially granting Father's motion to expedite the appeal, sixty days after oral argument on October 8, 2003, Father moved for an expedited decision which motion was filed on December 2, 2003. Noteworthy, the following day, in a *per curiam* decision without written opinion, the Florida Third District Court of Appeal affirmed all of the orders entered by the Florida Family Court. *Appendix-40.*

To show that the this Court has jurisdiction to review the judgements below on a writ of certiorari as required by Rule 14(g)(i) by Father's timely and properly raising the federal questions sought to be reviewed, Father states that each federal question sought to be reviewed was raised at the trial level in the first instance and subsequently at the appellate court level, save for Point VI which was raised and only could have been raised at the appellate level. Given the voluminous nature of the record, the method or manner of raising these federal questions and the way in which they were passed on by those courts with a summary of the pertinent quotations of specific portions of the record with specific reference to the places in the record where the matter appears are included in the Appendix hereto.

REASONS FOR GRANTING THE WRIT

There are six compelling reason for granting this writ. First, the Florida Third District Court of Appeal-approved procedure for stripping Father of the custody of his minor children and terminating all Father's parental rights violated procedural due process as detailed below. Second, the Florida Third District Court of Appeal-approved required evidence for stripping Father of the custody of his minor children and terminating all Father's parental rights violated substantive due process guarantees as detailed below. Third, Florida Statute §61.30(12) violates equal protection guarantees by denying to Father's child of his second marriage equal support from Father. Fourth, setting Father's child support obligations at a level which bears no relationship to his ability to pay is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Fifth, Father (i) was improperly prohibited by the Florida State Court judge from suing in federal court and (ii) was improperly sanctioned for failing to appear in state court when he was under federal subpoena to appear in federal court at the same time in a different state. Sixth, the Florida Third District Court of Appeal procedure of issuing opinions *per curiam* without written decisions violates Father's equal protection rights.

I. The Florida Family Court Proceedings Violated Father's Procedural Due Process Guarantees

The course of the proceedings below from the timing of the setting of hearings to the entry of the final orders by Judge Lando – and orders not entered by Judge Lando – singularly and collectively establish a denial of procedural due process to Father in this termination of fundamental parental rights case.

A. Delay in Conducting Change in Custody Proceedings Violated Due Process

Mother's Emergency Motion to Temporarily Transfer custody of the minor children to her was filed on July 27, 2000. Judge Lando did not conclude the hearing on this "emergency" and "temporary" motion until October 8, 2001, some **430** days later. Indeed, it was not until October 8, 2001, that Judge Lando finally permitted Father to present his case to her. Moreover, Judge Lando did not enter her order on this motion until December 12, 2001, over **500** days after the filing of the original "Emergency" motion. Furthermore, Mother's Petition For Modification of Primary Physical Residence and Sole Responsibility filed on July 19, 2001, was not resolved until August 9, 2002, some **386** days later.

The Due Process guarantee of a hearing at a "meaningful time" and (i) a 500 day delay in resolving an "emergency motion" and (ii) a 386 day delay in resolving a custody motion, are simply irreconcilable. The delay is particularly grotesque when the minor children are removed from Father – the primary residential custodian during that time – based solely upon (i) the subsequently demonstrated spurious allegation of the "emergency" motion and (ii) placed with a parent – who the Guardian *ad litem* recognized – as failing "to properly encourage the love and support of the children for their father. [Mother]'s failings could be construed as having an alienating effect on the children. [Mother] should be counseled with respect to her obligation in this regard and follow up should be structured to make sure that she adjusts her behavior accordingly."

This Court has recognized a "fundamental liberty interest of natural parents in the care, custody, and management of their child." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). "Choices about marriage, family life, and the upbringing of children are among associational rights [the Supreme] Court has ranked as 'of basic importance in our society,' . . .. rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." *M. L. B. v. S. L. J.*, 519 U.S. 102, 116 (1996) (internal citation omitted).

As a general rule, therefore, before parents may be deprived of the care, custody or management of their children without their consent, due process – ordinarily a court proceeding resulting in an order permitting removal – must be accorded to them. See *Stanley*, 405 U.S. at 649, 651. A parent may not lawfully be deprived of the custody of his or her child without a hearing "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Here, Father was stripped by Judge Lando of his custody, relationship and management of his minor children without any meaningful hearing for over 500 days through the use of discretion in controlling her hearing calendar. Crucial too is that this is not a situation where the minor children have been removed on an emergency basis – indeed no complaint has ever been registered regarding these minor children and Father's primary residential custodian care of them during the six years he acted in that capacity. Contrariwise, this action arises upon the mother's spurious "Emergency" motion to transfer custody and Father's emergency motion to compel Judge Lando to enforce her own orders vesting custody in Father.

Instead of recognizing the clear rights Father had as primary residential custodian, Judge Lando failed to hear any part of Father's side for over **430** days but allowed a *de facto* modification of custody to continue for 15 months exclusively with Mother – who was objectively demonstrated by the Guardian *ad litem* to be dedicated to disaffecting Father's children from him – an objective she subsequently accomplished. Plainly, procedural due process requires more than delaying a hearing on an emergency petition for modification of custody for 15 months yet *de facto* granting that petition during that interval.

B. Judge Lando Improperly Limited Father's Presentation of Evidence

When Father was finally permitted to present evidence in opposition to Mother's Emergency Motion for Temporary Custody **438** days after that motion had been filed, Judge Lando expressly limited Father's ability to present his case by her directions. In particular, Judge Lando instructed Father at the beginning of his case-in-chief on October 8, 2001: "Only thing I would ask is try not to be repetitious with regard to testimony that I have already heard. . . . I have directed you not to repeat, and that is my ruling." And indeed, Judge Lando repeatedly instructed – **caustically** and with **sarcasm** – Father to stop his testimony as she had already heard it. Moreover, time and again during these proceedings, Judge Lando silenced Father and denied him the ability even to proffer his objections to preserve them for appellate review.

C. Judge Lando Abdicated Her Responsibility By Her Verbatim Entry of the Proposed Orders from Mother's Counsel

Of all that is appalling in this case, none equals the fact that both (i) the December 12, 2001, order of Judge Lando on Mother's Emergency Motion for Temporary Custody and (ii) the August 2002 orders on Contempt were the ***verbatim*** adoptions by Judge Lando of the proposed orders submitted by Mother's counsel upon which Father did not have an opportunity to comment prior to entry. As such, they must be reviewed as Judge Lando patently abandoned her pivotal rule as an "impartial judge" in this matter.

D. Judge Lando's Termination of Father's Parental Rights Violated Father's Fundamental and Due Process Rights

The *de jure* and *de factor* termination of Father's parental rights contained in the December 12, 2001, order violated Father's fundamental and procedural due process rights.

That order, at paragraph 4 states, "No visitation shall take place between the Former Husband and the minor children until therapy takes place." *Appendix-11*. Of great moment is that Mother's Emergency Motion for Temporary Custody did not contain any request for such relief – i.e. the *de facto* and *de jure* indefinite suspension of Father's rights in his minor children.

Hence, and first, this order is defective as Father's parental rights were terminated without notice to him that Judge Lando was considering such a course or an opportunity to be heard and present evidence (such as his own psychologist) on the issue of whether for some unknown reason, Father had become so unfit as a parent that termination of all contact with his children and counseling was necessary.

Second, there was no proof to justify this order by Judge Lando and strikingly the proof was just the opposite. The guardian *ad litem* concluded in his December 15, 2000, report to Judge Lando that:

> Both [Father] and [Mother] are very bights (sic), articulate, caring an compassionate individuals. Both have substantially contributed to their children's welfare. . . . Both parents are adequate and competent and if anything happened to either parent, this Guardian would have not (sic) hesitancy in recommending to the Court that the other parent assume full responsibility over the children.

As no extreme circumstances were (i) plead, (ii) proved or (iii) placed in the December 12, 2001, order by Judge Lando the termination of Father's parental rights violated Father's due process and fundamental rights as a parent.

This Court has held that when the state seeks to change or affect the relationship of parent and child in furtherance of a

legitimate state interest, a Fourteenth Amendment liberty interest is implicated and the state should adhere to rigorous procedural safeguards. *Santosky v. Kramer*, 455 U.S. 745 (1982) (involving termination of parental rights); *Stanley v. Illinois*, 405 U.S. 645 (1972) (determining custody rights of unwed father). *Accord*: *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (the custody, care and nurture of the child reside first with the parents); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (liberty guaranteed by the Fourteenth Amendment includes the right to establish a home and bring up children).

Such safeguards were grotesquely absent here.

E. Lack of Notice to Father of the Expansion of the Hearings Beyond the July 27, 2000 Allegations Violated Father's Due Process Rights

Father was denied procedural due process by Judge Lando's conduct of the hearing on Mother's Emergency Motion to Transfer Custody by having no notice of the expanded scope of the hearing prior to the continuation of the December 15, 2000, hearing 283 days later on September 24, 2001. As such, Father was not able to prepare adequately so that he could have a meaning opportunity to be heard. The factual allegations in support of Mother's July 27, 2000, Emergency Motion for Temporary Custody are specifically limited to allegations concerning Father's alleged "abandonment" behavior that occurred between May 2000 and July 27, 2000. Plainly, Mother's Emergency Motion for Temporary Custody could not make allegations about Father's future behavior. Moreover, at the initial hearing on this motion held on October 24, 2000, Mother's counsel's opening statement limited the proof of Father's behavior justifying a change in custody to the period May 2000 through July 2000. Hence, Father prepared and presented his case based upon this express limitation on the factual basis for the change in temporary custody.

Indeed, at both the October 24, 2000, and the December 15, 2000, hearings, the direct examination of Father by Mother covered only the area that could be covered, i.e., whether he "physically, financially and emotionally" abandoned the minor children from May 2000 until July 27, 2000 as alleged by Mother. As such, Father was clearly expecting the proof to be limited to that which was alleged in the only pleading at issue – Mother's Emergency Motion for Temporary Custody which was limited to events occurring in the summer of 2000.

Nonetheless, Judge Lando at the continuation of the hearing on Mother's Emergency Motion for Temporary Custody on September 24, 2001 – without notice to Father and over Father's express objections to this expansion of the scope of the hearings beyond the boundaries of the pleadings – allowed Mother to delve into the issues that occurred not only between May 2000 and July 27, 2000, but up until the hearing on September 24, 2001.

As such, Father, on notice for a trial concerning issues that occurred during the summer of 2000, all of a sudden found himself confronted with a trial on the un-noticed issues from summer 2000 to the fall of 2001. Indeed, Judge Lando's expansion of the scope of the hearing on September 24, 2001, is plainly evidenced at paragraph "K" of the December 12, 2001, order wherein Judge Lando makes findings regarding the Christmas 2000 visitation by the minor children to Father in Maryland. *(Appendix-8)*.

Thus, Father found himself on September 24, 2001, on the stand answering questions – and unprepared to do so – about topics he was given no notice were to be the subject of the inquiry or serve as a basis to take his children from him. Such practice violates fundamental procedureal due process guarantees.

F. Judge Lando Utilized Stale Evidence Which Caused Her To Mis-Recollect the Testimony

In the December 12, 2001, order, Judge Lando, held that "All testimony taken in this hearing shall be adopted and made a part of the hearing on the Former Wife's Petition for Modification of Primary Physical Residence". *(Appendix-11)*. Hence, when the hearings continued on the remaining motions on June 1, 2002, Judge Lando incorporated by reference the testimony she heard given under different motions and petitions to matters she was hearing as much as 654 days after the testimony was first given. Father objected to this procedure.

G. The Bias of Judge Lando Against Father Violated Father's Due Process Rights

The repeated real bias – or even if only apparent – of Judge Lando against Father is plain and violated Father's right to an "impartial tribunal" to determine his fundamental rights in his children. In *Peters v. Kiff*, 407 U.S. 493 (1972) this Court stated, "Moreover, even if there is no showing of actual bias in the tribunal, this Court has held **that due process is denied** by circumstances that create the likelihood or the **appearance of bias**."

Here those circumstances are documented in the six motions to disqualify Judge Lando which singularly and cumulatively demonstrated Judge Lando's bias against Father in this most sensitive of issues – the custody of his children and include:

1. Judge Lando was exposed to privileged communications between the parties and repeatedly used them in determining this case;

2. Judge Lando refused to allow Father to be

heard before ruling;

3. Judge Lando (i) engaged in *ex parte* communications with Mother's counsel, (ii) entertained an *ore tenus* motion for contempt which had not been noticed for hearing, (iii) ruled on that motion for contempt without permitting the Father to be heard in opposition and (iv) all during a hearing without a stenographer in violation of Florida Rules of Judicial Administration, Rule 2.070(b)+(d) and over the express objections of Father;

4. Judge Lando again refused to allow Father to be heard before sanctioning him for failing to produce his second wife's pay-stubs – when those documents were not within his custody or control as he had legally separated from his second wife and thus had no access to her pay-stubs under Maryland law ;

5. Judge Lando's favoring of Mother over Father in the setting of hearings. Thus, though Father made pursuant to Fla. Stat. 61.16 a "Motion for Attorney Fees" on October 31, 2001, Judge Lando refused to set – and indeed never did set – a hearing. However, when Mother made the same motion on July 2, 2002, Judge Lando set the hearing date 51 days later on August 27, 2002.

6. Judge Lando entered *verbatim*, the proposed order of Mother on this very sensitive issue of custody and support which resulted in Father's incarceration for seventy-five days.

Most egregiously, and alone violating due process rights, at the hearing continued to October 8, 2001, during Father's direct testimony, Judge Lando not only made a sarcastic remark directed to Father, she subsequently admitted to this onerous and unethical behavior on the record. Judge Lando, by belittling Father through sarcasm, denied to Father a fair hearing and as

such due process rights were not accorded Father.

H. Florida Public Policy Requires Attorney Fees and Costs To Be Borne By Mother

Florida Statute, §61.16 – "Attorney's fees, suit money, and costs" states in pertinent part:

> (1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings and appeals.

In *Levy v. Levy*, 483 So.2d 455 (3rd DCA 1986), the Florida Third District Court of Appeal stated "[O]ne of the underlying principles upon which fees are allowed at all in domestic cases, that is, to equalize the otherwise disparate financial abilities of the respective spouses to retain counsel."

Father initially sought *pendente lite* appellate attorney fees and costs from Judge Lando by motion dated October 31, 2001. Judge Lando, through her administrative assistant, advised Father that Judge Lando would not consider such matters before August 2002 – well after the subject appeal would have been decided. Moreover and significantly, though asked to do so, Judge Lando in December 2001 refused to enter a submitted agreed-by-counsel-as-to-form order stating her intention to not consider the matter of attorney fees and costs until August 2002. To date, though August 2002 has come and gone, Judge Lando has refused to consider this October 29, 2001, motion for pendente lite attorney fees and costs.

On September 9, 2002, Father again moved for pendente

lite appellate attorney fees and costs before Judge Lando. Again, Judge Lando refused to set this motion for hearing and has not otherwise ruled upon it. The law under Florida Statute, §61.16 and the lack of hearing by both Judge Lando and this Court on the issue of attorney fees and costs has forced Father to represent himself in violation of the plain public policy of the State of Florida. As such, the entire proceeding is in error and must be reviewed for that reason alone.

II. The Florida Family Court Proceedings Violated Father's Substantive Due Process Guarantees

As Mr. Justice Stewart, with whom Mr. Justice Rehnquist joined, concurring in *Smith v. Organization of Foster Families for Equality and Reform*, 431 U.S. 816 (1997), stated, "One of the liberties protected by the Due Process Clause, the Court has held, is the freedom to 'establish a home and bring up children.' *Meyer v. Nebraska*, supra, 262 U.S., at 399. If a State were to attempt to force the breakup of a natural family, over the objections of the parents and their children, without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest, I should have little doubt that the State would have intruded impermissibly on 'the private realm of family life which the state cannot enter.' *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 88 L.Ed. 645."

Here, the pleadings and the substantive proof relied upon by the Family Court to break-up Father's relationship with his children was "without some showing of unfitness and for the sole reason that to do so was thought to be in the children's best interest" and accordingly "intruded impermissibly" on the private realm of family life which "the state cannot enter". As such, Father's fundamental liberty interest of Due Process was violated by the termination of his rights in his children.

First, as to the pleadings, on October 8, 2001, at the

conclusion of Mother's direct case on her Motion for Temporary Custody, Father made a motion for directed verdict. That motion was based upon Mother's fantastic admissions during cross-examination by Father that (i) Father did not financially abandon the minor children, (ii) Father did not physically abandon the minor children and (iii) did not emotionally abandon the minor children all in direct contradiction of the allegations of Mother's Emergency Motion for Temporary Custody.

Mother's subsequent Petition for Modification of Primary Physical Residence and Sole Responsibility is likewise devoid of any pleading supporting a finding of *"significant inadequacy"* by Father in the care of the minor children. To the extent that pleading alleges alienation by the Father from his children, it must be noted that (i) Father was under a court order not to have any contact with the minor children since December 2001 and (ii) Judge Lando refused to issue any order of visitation for over 500 days by not ruling on Father's motion modify the visitation schedule until after she had ordered Father not to have any contact with his children.

The primary allegation upon which the petition for sole responsibility is based on Father's alleged failure to pay child support – an improper basis in all events to justify a change in primary physical residence or parental responsibility. Thus the non-financial allegations relied upon by Mother as grounds for modification when reviewed simply do not add up to facts sufficient to justify a change in custody and awarding sole parental responsibility to Mother. As such, the change in custody violated Father's Due Process and Equal Protection guarantees and his fundamental rights as a parent.

Second, ignoring the procedural defects in the pleadings described above, the orders themselves and the factual record do not permit the legal conclusion changing the residential custodianship of the minor children from Father. Neither the

order of December 12, 2001, nor the order of August 9, 2002, were supported by the record below and accordingly were wholly deficient and inadequate to support a change in primary residential custody and termination of Father's parental rights. Indeed, both orders (i) fail to make the requisite findings of Florida Statute §61.13, (ii) only make findings of fact in a conclusory manner, and (iii) ignore the favorable evidence below to Father and against Mother. Moreover, when Judge Lando does make specific findings of fact – parroting the proposed order of Mother's counsel – the findings are simply contrary to the evidence. As such, there was no "showing" to sustain a finding that Father was "unfit" to continue as primary residential custodian.

This Court must review in their entirety the hearings held on October 24, 2000, December 15, 2000, September 24, 25, 26, 2001, October 8, 2001, June 4, 5, 6, 7 and July 1, 2001 in support of Mother's motions to transfer custody to try to find substantial and competent evidence to "show" Father's "unfitness" to be a parent. Father is left trying to prove here the negative – which is like swatting at unseen sand flies and simply cannot be done.

III. Father's Support Obligation Offends Equal Protection

The net result of continued enforcement of the Marital Settlement Agreement as Judge Lando did by her orders of support of August 9, 2002, is that the three children of Father's first marriage will benefit disproportionately greater than Father's child from his second marriage. Indeed, given the practical effect of that order – to destitute Father and leave nothing for his support of his son from a subsequent marriage – such a result is noxious to the sentiments of Equal Protection and thus Florida Statute §61.30(12) and the orders of support cannot be sustained under constitutional principals.

Only one other federal court has addressed the issue of equal protection and state statutes setting child support obligations. In *P.O.P.S. v. Gardner*, 998 F.2d 764 (9th Cir. 1993), the court affirmed a dismissal of a constitutional challenge to a Washington state child support schedule which – similar to Florida's scheme found at §61.30(12) – excluded subsequently born children of other relationships in determining the level of child support to be ordered. *Id.* at 769. In upholding the constitutionality of the child support schedule against an equal protection challenge, the Ninth Circuit held that the "schedule does not directly and substantially interfere with fundamental rights". *Id.* at 770. However, unlike Florida Statute §61.30(12), the Washington State schedule expressly required the courts to consider and if necessary deviate from the schedule if children from other relationships were present. *Id.* at 769.

Notably, Florida does not permit such a deviation, expressly prohibiting such consideration at §61.30(12)(c): "The issue of subsequent children under paragraph (a) or paragraph (b) may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award." (Emphasis added).

This Court must look to a directly analogous determination of equal protection guarantees found at *Gomez v. Perez*, 409 U.S. 535 (1973). There, this Court addressed the issue of "whether the laws of Texas may constitutionally grant legitimate children a judicially enforceable right to support from their natural fathers and at the same time deny that right to illegitimate children." *Id.* at 535. This Court first found that "the controlling law is the Texas common-law rule that illegitimate children, unlike legitimate children, have no legal right to support from their fathers." *Id.* at 536-537. In striking down the quoted law of Texas, this Court held:

> Under these decisions, a State may not invidiously discriminate against illegitimate

> children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother. For a State to do so is "illogical and unjust." *Id.*, at 175, 92 S.Ct., at 1406.

Id. at 537-538.

Here, Florida has established a statutory right for children of a first marriage to needed support but explicitly has denied children – whose only crime was to be subsequently born of a different parent – the same right to needed support. For Florida to do this is "illogical and unjust" if only because if Father's child of the subsequent marriage had been born out-of-wedlock, *Gomez* would have precluded the disparate treatment §61.30(12) sets. The subsequently born child certainly does not need less food than the prior children. But that is plainly what the State of Florida mandates. In *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972) this Court noted "the basic concept of our system [is] that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as unjust—way of deterring the parent." Here, it is the child born of a second marriage that is being penalized the same way an illegitimate child was being penalized in *Weber*.

In *Pohlmann v. Pohlmann*, 703 So. 2d 1121 (5th DCA 1997) the only Florida case which has addressed and upheld this issue of the constitutionality of §61.30(12), in his well-worded dissent, Judge Harris stated "The issue in this case, quite simply, is whether it is a "legitimate government interest" for the State,

through its legislative process, to prefer certain children over others. Because I believe that it is not, I would hold §61.30(12), Florida Statutes, unconstitutional under the provisions of Article I, § 2, of the Florida Constitution."

This Court must note that Father's child of his second marriage sought to raise the constitutionality of Florida Statute §61.30(12), through a declaratory judgment action filed in the U.S. District Court of the Southern District of Florida. That court dismissed the action upon the *Rooker-Feldman* and *Younger* doctrines. The Eleventh Circuit Court of Appeals, in an un-published opinion, in *Sibley v. Lando*, Case No. 03-14915 affirmed the dismissal stating "We conclude that the *Younger* doctrine required the district court to abstain for the reasons the court expressed in its September 23 order. . . We find no abuse of discretion; an amendment would be futile." *Appendix-43.* As such, this Court must accept certiorari to determine the constitutionality of §61.30(12) as no other forum exists to address this statute which so significantly impinges upon the right to support of children born of subsequent marriages.

IV. Father's Support Obligations Violate Due Process

Father maintains that there is a constitutional limitation upon the level of child support that a state can order a Father to pay – and incarcerate when such payment is not forthcoming as happened here – when such amount bears no relationship to Father's assets and ability to pay such amounts and directly effects his ability to raise his children. "While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, [Due Process] denotes not merely freedom from bodily restraint but also the right of the individual to . . . establish a home and bring up children. . . . The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public

interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect." *Meyer v. State of Nebraska*, 262 U.S. 390,399 (1923).

Here, on August 4, 2001, Father filed his Supplemental Petition for Modification of Child Support alleging a "substantial change in circumstances not contemplated at the time of the Final Judgment which was sufficient, material, involuntary and permanent in nature, requiring a modification of [Father]'s child support obligations". In the Orders on Support entered a year later on August 9, 2003, Judge Lando ignored the Florida statutory support guidelines and instead ordered Father to pay (i) $4,000/month from July 2000 to Mother for child support as required under the 1994 Martial Settlement Agreement and (ii) all private educational expenses of the children – a sum which now exceeds $400,000. This, Father is suppose to do on his income recognized by Judge Lando of $36,000/year.[1] This issue was raised, and review was denied, by this Court in Case Number 03-682.

Thus setting child support obligations at an absurd amount is "arbitrary or without reasonable relation to some purpose" and has denied to Father the due process right to raise his children. Instead, stripped of that right, the children's mother now makes the sole determination of what schools they are to attend and Father must pay that amount regardless of his wishes. Such a result does not comport with Substantive Due

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[1] While recognizing Father's inability to pay, the Florida Third District Court of Appeal substituted a legal fiction that Father's could compel his father, Harper Sibley, Jr., to pay Father's child support and educational obligations. Noteworthy is that when Father sought to enforce this "right to compel" by suit against Harper Sibley, Jr., the Florida Family Court denied him the right to do so.

Process guarantees as the State has stripped Father of his fundamental right to raise his children through the punitive imposition of absurd child support obligations.

V. Father was Improperly Prohibited From Suing in Other Courts and Was Improperly Sanctioned

On May 29, 2001, Judge Platzer for Judge Lando entered an *ex-parte* order which, among other holdings, enjoined Father from "litigating issues with respect to the trust and the payment of fees and costs from the trust assets in any forum other than the 11th Judicial Circuit in and for Miami-Dade County, Florida". Plainly, such an order has no legal justification and is particularly onerous as the Children's Trusts are a product of the New York Surrogate Court from where they arose and over which that Court – and not Judge Lando sitting in the 11th Judicial Circuit in and for Miami-Dade County, Florida – has unquestionable jurisdiction. Subsequently, on February 11, 2003, Judge Lando entered an order which at ¶6 stated "The [Appellant here] is ordered to not commence new legal proceedings in any other forum against [the former wife]."

Indeed, such orders violate this Court's express holding in *Donovan v. City of Dallas*, 377 U.S. 408, 84 S.Ct. 1579, 12 L.Ed.2d 409 (1964), "That right [to federal court access] was granted by Congress and cannot be taken away by the State. The Texas courts were without power to take away this federal right by contempt proceedings or otherwise."

Significantly, Father sought a declaratory judgement that Judge Lando's February 11, 2003, order violated his rights as recognized in *Donovan v. City of Dallas*. The Eleventh Circuit ruled on March 8, 2004, in *Sibley v. Lando*, 03-13340, that Father's remedy was a state court appeal of the February 11, 2003, order "and then, if he is unhappy with the result, to continue his appeal on to the United States Supreme Court. . .We conclude this claim was improperly brought by [Father] in

federal district court . . . because the *Rooker-Feldman* doctrine bars this action in federal court." Hence, Father's only remedy to enforce his rights recognized in *Donovan v. City of Dallas* is this instant petition.

Additionally, pursuant to a federal subpoena properly issued and served upon Father on April 15, 2002, Father was required to appear and testify in a trial in the Eastern District of Virginia on April 25, 2002. On April 25, 2002, Father appeared as subpoenaed and testified as noted *Hazbun v. Rodriguez*, 191F.Supp.2d 685 (E.D. Va. 2002) and *Hazbun v. Rodriguez*, 200 F.Supp2d 603 (E.D. Va. 2002). The matter was continued by that court to April 26, 2002, and Father was instructed to remain available if further testimony was necessary from him. The trial concluded before that court in the afternoon of April 26, 2002.

On the same day – April 26, 2002 – Judge Lando conducted a hearing on one day's notice to Father, and sanctioned Father for failing to appear. Father, who did not have notice of the hearing, could not attend the April 26 hearing in Miami as he was under federal subpoena to appear and was appearing in Virginia at that time. Hence, the order sanctioning Father for not appearing for the hearing on April 26, 2002, violated the supremacy clause and must be reviewed by this Court.

VI. The Florida Supreme Court and the Third District Court of Appeal Violated Father's Equal Protection Right

This Court must accept certiorari of the questions presented below as (i) Florida Supreme Court review is prohibited by *Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980) and (ii) Federal Court review has been denied as detailed in 03-1205 pending before this Court on the grounds that the *Rooker-Feldman* and *Younger* doctrines preclude Federal Court review of these issues. *Appendix-35*. Accordingly, a denial of review here

denies to Father a substantive review in any court of his allegations of constitutional violations by the rules of procedure of the Florida Supreme Court and practice of the Third District Court of Appeal as documented below.

A. The *Per Curiam* Affirmance Violates Equal Protection By Denying Florida Supreme Court Review of Florida District Courts of Appeal Conflicts

By entering a *per curiam* affirmance without written opinion, the Third District Court of Appeal violated Father's Equal Protection guarantees as Father was treated differently than similarly situated litigants in other cases without explanation of the disparate treatment. Moreover, pursuant to Florida Supreme Court rule such a practice of denying a written decision arbitrarily creates two classes of appellants in Florida: (i) those who get a written opinion thereby creating a right to Florida Supreme Court conflict-review and (ii) those who do not get a written opinion thereby creating an un-reviewable and separate body of law which conflicts with the express rulings of the Federal and Florida Courts and thus denies equal protection of the laws.

This rule and practice violates equal protection guarantees as it prohibits Florida Supreme Court review of such decisions under Florida Rules of Appellate Procedure, Rule 9.030(a)(ii). In *Jenkins v. State*, 385 So.2d 1356, 1359 (Fla. 1980), the Florida Supreme Court held, "Accordingly, we hold that . . . the Supreme Court of Florida lacks jurisdiction to review *per curiam* decisions of the several district courts of appeal of this state rendered without opinion . . . when the basis for such review is an alleged conflict of that decision with a decision of another district court of appeal or of the Supreme Court." (Emphasis added).

In this case, such conflicts, which now can never be

reviewed by the Florida Supreme Court, are numerous and only partially identified below given the page limitations of this petition. As such, the *per curiam* affirmance without written decision practice of the Florida Third District Court of Appeal as approved by the Florida Supreme Court violates equal protection guarantees and this practice must be reviewed by this Court.

B. The *Per Curiam* Affirmance Violates Equal Protection By Creating Intra-Third District Conflicts

As important, the conflict between the reported decisions of the Florida Third District Court of Appeal and the result in this case violates Equal Protection Guarantees. Remarkably, the same Third District Court of Appeal recognized in *Velez v. The City of Coral Gables*, 819 So.2d 895 (Fla.App. 3 Dist. 2002), under an Equal Protection rationale, "[t]he interpretation urged by the City and the Mallos also raises the spectre of denial of equal protection of the law, as suggested by the Velezes. An administrative agency has the burden of providing a reasonable explanation for inconsistent results based upon similar facts." (Citations omitted).

Likewise, the Third District Court of Appeal has the same burden to provide a "reasonable explanation for inconsistent results based upon similar facts." To hold otherwise, would exempt the Third District Court of Appeal from the same equal protection obligations of *stare decisis* it recognized must be accorded in the administrative arena. Clearly, equal protection guarantees do not stop at the door to the judicial branch of government.

Here, the "inconsistent results" from "similar facts" are summarily detailed, *infra*, given the page limitations of this petition by citing the facts in this case juxtaposed against the reported decisions involving "similar facts" but resulting in "inconsistent results".

A. Judge Lando repeatedly interfered with Father's attempt to proffer evidence: Prior Third District Court of Appeal rulings that reversal is mandatory. *See*: *Cason v. Smith*, 365 So.2d 1042 (3rd DCA 1978); *Musachia v. Terry*, 140 So.2d 605, 608 (3rd DCA 1962).

B. Judge Lando (i) never issued the required order for trial under Florida Family Law Rules, Rule 12.440 and (ii) never held the required pre-trial hearing under Florida Family Law Rules, Rule 12.200(b). Prior Third District Court of Appeal rulings that reversal in such cases is mandatory: *Thomas v. Feinberg* 745 So.2d 500, 501 (3rd DCA 1999); *Gelatt v. State, Dept. of HRS*, 585 So.2d 477 (3rd DCA 1991); *Ivans v. Greenbaum*, 613 So.2d 130(Fla.App. 3 Dist. 1993).

C. The orders at issue were the *verbatim* adoptions by Judge Lando of the proposed orders submitted by Mother's counsel. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory: *Waldman v. Waldman*, 520 So. 2d 87, n.4 (3rd DCA 1988).

D. Father's parental rights were terminated without notice to him that Judge Lando was considering such a course or an opportunity to be heard and present evidence. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory *Scheer v. Scheer*, 132 So.2d 456, 458 (3rd DCA 1961); *Berlin v. Berlin*, 369 So.2d 434,(Fla.App. 3 Dist. 1979); *Kranis v. Kranis*, 313 So.2d 135 (Fla.App. 3 Dist. 1975); *Childress v. Childress*, 309 So.2d 581(Fla.App. 3 Dist. 1975).

E. Father was denied a hearing on whether he was entitled to attorney fees. Prior Third District Court of Appeal rulings that reversal in such cases is a hearing is mandatory: *Levy v. Levy*, 483 So.2d 455 (3rd DCA 1986); *Bailey v. Bailey*, 392 So.2d 49, 52 (3rd DCA 1981); *Seitz v. Seitz*, 471 So.2d 612, 615 (3rd DCA 1985).

F. Judge Lando utilized privileged evidence. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory: *Blattman v. Williams Island Associates, Ltd.*, 592 So.2d 269 (Fla.App. 3 Dist. 1991).

G. Father's motions as Trustee to dissolve the temporary injunctions entered below were ignored by Judge Lando and in all events failed to comply with Fla.R.Civ.P. 1.610. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory: *Miami v. Coll*, 546 So.2d 775 (3rd DCA 1989); *Ginsberg v. Ginsberg*, 738 So.2d 1032, footnote 1 (Fla.App. 3 Dist. 1999); *Kallman v. Kallman*, 623 So.2d 1213(Fla.App. 3 Dist. 1993); *SeaEscape, Ltd., Inc. v. Maximum Marketing Exposure, Inc.*, 568 So.2d 952 (Fla.App. 3 Dist. 1990).

H. One day notice of a hearing was not proper for an out-of-state party. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory; *Henzel v. Golstein*, 349 So. 2d 824 (3rd DCA 1977); *Goral v. State*, 553 So. 2d 1282 (3rd DCA 1989).

I. The law relating to modification of child support prohibits the imposition of a support order which is three times Father's present annual income as ordered by Judge Lando and as such that order must be vacated. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory; *Bickett v. Bickett*, 579 So. 2d 149 (3rd DCA 1991); *Blum v. Blum*, 382 So.2d 52 (Fla. 3d DCA 1980); *Suarez v. Suarez*, 514 So.2d 428, 429 (Fla. 3d DCA 1987), rev. denied, 525 So.2d 881 (Fla.1988); *Farrington v. Farrington*, 390 So.2d 461 (Fla. 3d DCA 1980), pet. for review denied, 399 So.2d 1142 (Fla.1981); *Dunstan v. Weatherspoon*, 505 So.2d 23 (Fla. 3d DCA 1987); *Grabow v. Grabow*, 442 So.2d 262, 263 (Fla. 3d DCA 1983).

J. Mother and Father shared "joint parental responsibility" for the minor children. Prior Third District Court of Appeal rulings that stripping Father of that responsibility

required reversal in such cases is mandatory; *Tamari v. Turko Tamari*, 599 So.2d 680, 681 (3rd DCA 1992); *Meloan v. Coverdale*, 525 So.2d 935 (3rd DCA 1988).

K. The Contempt Orders fail to make the requisite findings of fact and as such depart from the essential requirements of law in this regard. Prior Third District Court of Appeal rulings that reversal in such cases is mandatory. *Vereen v. Spears*, Case No.: 3D02-1476 (3rd DCA 2002).

L. Here, the Third District Court of Appeal premised Father's ability to pay not on his assets but upon the assets of his "very wealthy father". Prior Third District Court of Appeal rulings that reversal in such cases is mandatory when reliance upon funds of family members is the basis for finding "ability to pay"; *Thilem v. Thilem*, 662 So.2d 1314 (3rd DCA 1995); *Sol v. Sol*, 656 So.2d 206 (3rd DCA 1995); *Bob v. Bob*, 310 So.2d 328, 330 (Fla. 3d DCA 1975); *Edwards v. Edwards*, 615 So.2d 178 (3rd DCA 1993); *Seilkop v. Seilkop*, 575 So.2d 269 (Fla. 3d DCA 1991).

Taken separately or together, these twelve examples of "inconsistent results" from "similar facts" merely scratch the surface of the Equal Protection and Due Process violations here. To permit the Third District Court of Appeal to be its own watch-dog for insuring equal protection of the laws by prohibiting review of its decisions by any superior court simply does not comport with the strict demands of *stare decisis*. Moreover, given that some 67% of the cases decided by the Third District Court of Appeal are *per curiam* without written opinions, the magnitude of the Equal Protection violation is potentially huge, as the facts in this case indisputably illuminate.

Accordingly, this Court must review the practice of the Third District Court of Appeal in issuing *per curiam* affirmances without written opinion to determine if such a practice violates equal protection guarantees.

CONCLUSION

Father lost all care, custody and management of his minor children not because he was ever found to be unfit as a parent. He has lost this fundamental right through a process and upon evidence which cannot withstand constitutional muster for compliance with due process of law. Additionally, Florida has enacted a statute which invidiously discriminates against children born of a subsequent marriage and forces Father to deny to his child of his second marriage the same level of support – and thereby the ability to express his love and affection – as the level Florida mandates be given to children of his first marriage. Indeed, by setting Father's child support obligations at 133% of his gross income, Florida has destituted Father and forced Father to deny to his child of his second marriage the same benefits that the children of his first marriage – two of whom have now reached the age of majority – enjoyed when they were of similar and developmentally crucial age.

Moreover, the Supremacy clause cannot sanction Florida's prohibiting Father from seeking relief in Federal Court and sanctioning Father when he failed to appear at a one-day's noticed state-court hearing when under federal subpoena in another state. Last, Florida's procedure for denying review of appellate decisions rendered *per curiam* without written opinion creates both inter-district and intra-district conflicts of law which result in equal protection violations. Accordingly, this petition for a writ of certiorari must be granted to review the procedural and substantive violations of Father's fundamental parental and constitutional rights.

Respectfully submitted,

Montgomery Blair Sibley
Counsel for Petitioner

(2)

Supreme Court, U.S.
FILED

No. 03-1480 APR 12 2004

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

BARBARA SIBLEY,

Respondent.

On Petition for Writ of Certiorari to the Florida Third District Court of Appeal

Appendix to Petition for Writ of Certiorari

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

AGREED ORDER PROHIBITING THE FORMER HUSBAND FROM REMOVING THE MINOR CHILDREN FROM THEIR RESIDENCE IN DADE COUNTY WITHOUT ORDER OF COURT

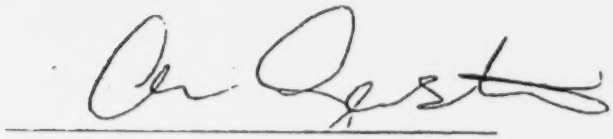
THIS CAUSE coming on before the Court upon the agreement of the parties to the entry of this order, and the Court being fully advised, it is thereby

ORDERED AND ADJUDGED as follows:

1. This order is without prejudice to either party as to any substantive issues in connection with any possible relocation.

2. The Former Husband shall not remove the permanent residence of the minor children from Dade County, Florida without providing to the Former Wife, in writing, at least forty-five days in advance of any contemplated move, his intention to relocate and relocation plans. This shall provide the Former Wife with the opportunity to file any motions she deems appropriate with the court.

DONE AND ORDERED in Chambers, at Miami, Dade County, Florida, this day of 14 day of May, 1998.



CIRCUIT COURT JUDGE

cc: Bette Ellen Quiat, Esq., 8525 SW 92 St., Ste. B-5, Miami, FL 33156
Montgomery Blair Sibley, pro se, 1234 S. Dixie Highway, Suite 340, Coral Gables, FL 33146

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER GRANTING FORMER WIFE'S EMERGENCY MOTION FOR TEMPORARY PRIMARY PHYSICAL RESIDENCE OF THE MINOR CHILDREN AND TO ALLOW MINOR CHILDREN TO BE ENROLLED IN PRIVATE SCHOOL AND PROHIBITING THE REMOVAL OF THE CHILDREN TO WASHINGTON, D.C. AND DENYING RESPONDENT'S EMERGENCY MOTION FOR CONTEMPT AND ENFORCEMENT AND TO MODIFY VISITATION SCHEDULE

THIS MATTER coming on to be heard on September 24 and 25, 2001 and October 8, 2001, upon the former wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor Children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington,. D.C., and Respondent's Emergency Motion for Contempt and Enforcement and to modify visitation schedule, and the Court having heard testimony, argument and being duly advised in the premises, finds as follows:

A. This matter has had a significant amount of motions and activity before the Court and the Court has had the

opportunity at length to observe the demeanor of the parties, to intimately review their actions and their words to each other and to their children through testimony and through written correspondence introduced as evidence.

B. The Court has reviewed the lengthy correspondence between the parties, prior orders and all of the evidence submitted in this matter.

C. This Court has been in the unique position of observing not only the context of the words spoken during testimony, buy. the demeanor and behavior of the parties.

D. The Former Husband may have had a relationship with the minor children in the past, but his actions and words since his remarriage and birth of his son, SASHA, have continuously negatively escalated to the point where it would be detrimental for the children to be with their father.

E. The Court has heard testimony of the children being physically hit.

F. Emotionally, the children have been devastated by the Former Husband's behavior such as keeping the children homo from school as punishment, using the children as indentured servants to babysit his new child, failing to have any contact whatsoever with the children for months at a time, and economically depriving the children of necessities and interfering with their education.

G. The Court has had the unique opportunity to view the correspondence between the parties. The Former Husband's attempt to gain financial concessions from the Former Wife in exchange for a Court order confirming the primary physical residence of the children to the Former Wife reveals a deliberate attempt to "sell" the children to the Former Wife for the Former Husband's own economic benefit.

H. The Former Husband has shown preferential treatment to his new child, SASHA, economically, emotionally and in every way possible to the detriment of the children of this marriage.

I. The court has listened to the recommendations of the Guardian Ad Litem in this matter. The Court selected Dirk Lorenzen as a Guardian Ad Litem because of his qualifications as a psychologist, although not licensed to practice in the State of Florida, and his human ability to bond with children of this age. The Guardian Ad Litem has done a thorough and complete job in reviewing .his matter and making his recommendations.

J. The Former Wife has done everything she could to foster a relationship between the Former Husband and the minor children. She sent flowers on behalf of the children to the Former Husband's new wife at the time of their marriage, purchased gifts for the Former Husband, his new child and new wife, kept the Former Husband informed of all activities of the children, and ultimately made sure that the children went on the Christmas visitation in 2000 despite monumental resistance from the children. The Former Wife's behavior has been positive and encouraging to the children despite the Former Husband's actions.

K. During Christmas, 2000, this Court ordered the children to visit with their father in the hope of repairing the relationship. The visitation not only failed to repair their relationship, it destroyed any hope that the Former Husband could have a relationship with his children. As soon as the children got off the plane and arrived at the Former Husband"s residence, they were made to sit down and write numerous letters to their father describing each month's activities during which they had not seen him. They were ignored for Christmas and did not receive any gifts, although the Former Husband claimed that their plane flight wars their gift. Although it was

LIZA's birthday on December 26th, she did not receive a gift, although the Former "Husband claimed that her plane flight was hor Christmas and birthday gift. On the other hand, it was SASHA's birthday during the childrens visit, and they watched as SASHA opened presents and enjoyed a celebration for his birthday.

L. The Former Husband has put his new wife before his children. on an occasion where the Former Husband was to visit with LIZA at boarding school, he canceled the visitation because SASHA was ill and would not visit without SASHA and his new wife accompanying him to visit LIZA.

M. The Former Husband has divested himself of funds in order not to pay child support.

N. The Former Husband delivered all of the children's belonging to the Former wife prior to his leaving Miami. This Court believes that the parties as well as the children had a clear understanding that the children would remain with the Former Wife as the Former Husband departed to Washington, D.C. with his new wife and child. The Former Husband obtained a one-bedroom apartment upon his relocation to Washington, D.C. which this Court finds supports the understanding of the parties that the children would remain with the Former Wife.

0. What is clear to this Court is that this case is about money. It is about MONTGOMERY BLAIR SIBLEY not wanting to face a court determination for spending his childrens trust money and not wanting to pay child support. The Former Husband has even manipulated his owes father into not paying the tuition of the children and jeopardizing their educations.

P. The Former Husband has failed to furnish the former wife with insurance cards for the minor children's health

came.

Q. The minor child, MONTGOMERY BLAIR SIBLEY, has threatened to run away if he is required to visit with his father.

R. Both children are in fear of their father.

S. The Court heard the testimony of the minor child, ELIZABETH MASON SIBLEY, and observed her demeanor and visible and palpable fear and dread towards her father.

T. The Former Husband has used his funds to provide schooling for SASHA and schooling for his new wife despite the Final Judgment which requires him to provide funds for the children of this marriage's education.

U. The Former Wife discussed and communicated the desire of the minor child, ELIZABETH MASON SIBLEY, to attend Madeira school which the parties' oldest child, MARGARET, had attended and graduated, The correspondence between the parties indicates the Former Husband's assent conditioned on the Former Wife's agreeing to other issues for his economic benefit. The child has been attending Madeira School and has been doing well.

V. The Court £rode there has been a substantial change of circumstances sufficient. to require the granting of. the motion.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the Former Wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington, D.C. is hereby GRANTED.

2. The Former Husband shall immediately furnish to the Former Wife insurance cards for the children.

3. The Former Husband's Emergency Motion for Contempt and Enforcement and to Modify Visitation Schedule is hereby DENIED.

4. No visitation shall take place between the Former Husband and the minor children until therapy takes place.

5. All testimony taken in this hearing shall be adopted and made a part of the hearing on the Former Wife's Petition for Modification of Primary Physical Residence.

6. The Court reserves jurisdiction to, consider further recommendations of the Guardian Ad Litem as to the specific type of therapy which should occur prior to any visitation taking place.

7. The minor child, ELIZABETH MASON SIBLEY, shall be enrolled at Madeira School for this school year.

8. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 10 day of December, 2001.

CIRCUIT COURT JUDGE

Copies furnished to:

Bette Ellen Quiat, Esq., 8525 SW 92nd Street, Suite B-5, Miami, FL 33156
Montgomery Blair Sibley, 14512 Lee Road, Suite H, Chantilly, VA 20151
Dirk Lorenzen, Esq., 44 West Flagler Street, Suite 1000, Miami, FL 33130

IN THE DISTRICT COURT OF APPEAL OP FLORIDA THIRD DISTRICT

CASE NO.:3D01-2173
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY, SR.,
in his individual capacity and as
Trustee of the Minor Children's Trusts,

Appellant,

v.

BARBARA SIBLEY,

Appellee.
_____/

Opinion filed March 27, 2002

An appeal from the Circuit Court for Miami-Dade County, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley (Virginia), for appellant.

Bette E. Quiat; Jay M. Levy, for appellee.

Before GREEN and SHEVIN, JJ. and NESBITT, Senior Judge.

PER CURIAM.

We affirm the trial court's order compelling the father to pay for his daughter's college education expenses pursuant to the terms of the parties' marital settlement agreement. Our affirmance, however, is without prejudice for the father to pursue modification of their agreement with the lower court based

upon his current ability to pay for such expenses. We, of course, express no opinion as to the merits of any claim for modification at this juncture.

Affirmed as modified.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER GRANTING PETITIONER'S EMERGENCY MOTION FOR CONTEMPT FOR FAILURE TO PAY EDUCATIONAL EXPENSES OF THE CHILDREN AND PETITIONER'S SECOND EMERGENCY MOTION FOR CONTEMPT FOR FAILURE TO PAY EDUCATIONAL EXPENSES OF THE CHILDREN DATED APRIL 17, 2002

THIS MATTER having come on to be heard on June 4,-5, 6 and 7, 2002 and July 1, 2002 upon the Petitioner's Emergency Motion for Contempt for Failure to Pay Educational Expenses and Petitioner's Second Emergency Motion for Contempt for Failure to Pay Educational Expenses of the Children dated April 17, 2002, and the Court having heard testimony, argument of counsel and duly advised in the premises finds as follows:

A A Final Judgment of Dissolution of Marriage was entered on September 20, 1994 adopting and incorporating the Marital Settlement Agreement dated September 20, 1994.

B. Pursuant to the Final Judgment and Marital Settlement Agreement, paragraph 6 provides as follows:

Husband shall be responsible for, pay for and/or arrange to pay for all education expenses of the children while and until they achieve a college degree. The support herein shall include direct and incidental expenses of education, such as tuition, clothing, housing (while at school and away from their primary residence), books, activity fees, dues and any other education related expenses. Husband shall also provide funds for one trip home and one back to school each year at the end and beginning of each school year for any child attending school away from the primary residence. Pocket and spending money shall be provided to the children during each school year by the parties on a 50/50 basis in an amount to be mutually determined per semester between the parties.

C. The Former Husband has failed to pay the children's educational expenses for the years 2000-2001 and 2001-2002 as follows and as set forth in the Petitioner's Exhibit "F" of June 6, 2002:

1. For MARGARET HARPER SIBLEY: $44,925.00 by BARBARA SIBLEY; and $16,870.00 by the trust with an additional $16,205.00 paid by the trust for the Fall 2002 semester. By separate Order BARBARA SIBLEY has been reimbursed $500.00 for the 3/8/02 deposit to Wake Forest by the trust leaving a payment of $44,425.00 by BARBARA SIBLEY and $17,370.00.by the trust:

2. For ELIZABETH MASON SIBLEY: $48,045.36 by BARBARA SIBLEY; and $10,500.00 from the trust.

3. For MONTGOMERY BLAIR SIBLEY, JR.: $38,320.95 by BARBARA SIBLEY for which $10,500.00 was reimbursed to her by the trust leaving a balance due of $27,820.95.

D. Paragraph 18 of the Marital Settlement Agreement incorporated in the Final judgment provides:

> It is anticipated that the children will each receive the sum of $100,000.00 (One Hundred Thousand Dollars) from the estate of the husband's mother. Husband shall do all things necessary and within his ability to foster and bring about the occurrence of this expectation. The husband and the wife shall be the trustees unless otherwise designated by the estate or testator for any such inheritance, transfer or gifts received by the children and as provided by law.

E. Additionally, paragraph 19 provides:

> For and in consideration of all the above recited obligations assumed by husband, wife hereby waives all rights to alimony and support for herself from husband. Both parties waive any right to support, alimony (lump sum or periodic) and any other claim or payment from the other on account of the dissolution of marriage except as recited herein. However, this waiver is conditioned on full compliance by the husband of all terms, conditions, and obligations for the benefit of wife and children contained herein. In the event the husband does not comply with both the intent of and the stated provisions of this Agreement then the wife's waiver of alimony is void and the Court

shall retain jurisdiction for the determination of any alimony award to the wife and any other determination by the Court.

F. From the date of the entry of the Final Judgment until approximately April, 2000, all three children were in private school which was paid for by the paternal grandfather.

G. The paternal grandfather testified that he continues to pay the private school expenses, including college expenses, of all of his other grandchildren except the children of this marriage and one other grandchild. The paternal grandfather testified that he ceased paying the tuition because he believed that affording the private school to the minor children was assisting BARBARA SIBLEY who would otherwise have to pay the tuition of the children. It is clear that the paternal grandfather is being advised by the Former Husband not to pay the expenses of the children. Also, it is equally clear that the Former Husband has been set up in business and financed by the paternal grandfather, provided a home by the paternal grandfather, and may count on the paternal grandfather for regular gifts of large sums of money.

H. The Court has reviewed correspondence between the Former Husband and the Former Wife. The Former Husband, in writing, has held a deposit furnished to him by the paternal grandfather for their son's private school education, and refused to provide it to the educational institution. The Former Wife had to then furnish the deposit.

The paternal grandfather testified that the Former Husband, MONTGOMERY BLAIR SIBLEY, had never requested funds for the payment of the children's private school expenses after he ceased paying these expenses in the year 2000.

I. The Former Husband began post-divorce

litigation with the Former Wife in 1997. A plethora of petitions and motions were filed ultimately culminating in this Court's Order on All Pending Motions dated March 26, 1999. The Former Husband filed an appeal from said order and the parties thereafter entered into two stipulations styled Stipulation of Settlement between Barbara Sibley, Montgomery Blair Sibley and Guardian Ad Litem and Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley which stipulations were approved by Order of this Court dated February 17, 2000.

J. Both stipulations of settlement specifically provided that except as modified in each stipulation, all provisions of the Marital Settlement Agreement and Final Judgment and Order on all pending motions dated March 26, 1999 shall remain in full force and effect.

K. In the Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley, the parties waived each child's interest (in the amount of $20,100.00 or any amount due) from the inheritance left to MONTGOMERY BLAIR SIBLEY by his mother, Beatrice Blair, and any accounting. Thus, MONTGOMERY BLAIR SIBLEY was not required to pay to each minor child the sum of $20,100.00 which had been ordered to be paid by the Court. This provided the Former Husband with an additional $60,300.00. The parties' stipulations provided that one of the primary reasons for entering into them was concluding the litigation between the Former Husband and the Former Wife and that both parents believed this to be in the best interest of the children.

L. Having received the benefit of the Stipulation which was confirmed by Order dated February 17, 2000, the Former Husband thereafter immediately ceased to pay for and/or arrange to pay for all of the education expenses of the children pursuant to paragraph 6 of the Marital Settlement Agreement.

M. The Court finds that the Former Husband's

actions were willful, wanton and in direct violation of the Final Judgment.

N. The Former Husband has not only failed to pay for and/or arrange to pay for all education expenses of the children as provided in paragraph 6, but has intentionally and maliciously either caused the paternal grandfather's funds, such as the deposit, not to be provided for the benefit of the minor children, interfered and/or failed to ask the paternal grandfather for the educational expenses.

O. The Former Husband has arranged for his son (of his current marriage), Sasha's private daycare/school expenses to be paid by the paternal grandfather.

P. The Former Husband has arranged for the paternal grandfather to purchase a new home in which the Former Husband, his current wife and minor son, Sasha, reside.

Q. The Former Husband has been able to arrange for the paternal grandfather to purchase a business in which the Former Husband is employed.

R. The Former Wife has taken the position that the Marital Settlement Agreement permits the children's trusts to pay for the children's educations.

S. The Former Husband and the Guardian Ad Litem have taken the positions that the trusts should not pay for the children's private school tattiness. The reasons of the Guardian Ad Litem and Former Husband as to why this should not be done are different.

T. The Court finds that there is nothing which prohibits the children's trusts from paying for their education. The Court's finding is based, in part, on the Former Husband's written documentation to the Former Wife which has been

introduced in evidence and which shows his state of mind as to his opinion as to the use of the trusts. See Petitioner's Exhibit "B" of 6/5/02 and Respondent's Exhibits "A" and "C" of 6/4/02.

U. The Court finds that the Former Husband has at all times had the ability to pay the children's educational costs directly and/or to arrange to pay for the children's educational costs. He has deliberately divested himself of assets that could be used to meet these expenses, such as the family silver, which lie gave as a "gift" to his present wife, and other items of value, and family heirlooms, which he has given away with no compensation,. in order to attempt to place himself in a position wherein he could plead poverty to the Court. However, the Court notes all of the above and rejects Mr. Sibley's arguments as to his
perceived inability to pay or arrange to pay his responsibilities to his children in an equal fashion to the treatment of his youngest child.

Based upon the foregoing it is ORDERED AND ADJUDGED as follows:

1. The Former Husband, MONTGOMERY BLAIR SIBLEY, is in contempt of Court and the Final Judgment of Dissolution of Marriage for failure to be responsible for, pay for and/or arrange to pay for the college expenses of the children while and until the achieve a college degree.

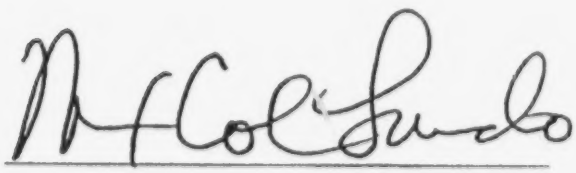
2 The Former Husband is hereby sentenced to ninety (90) days in the Dade County jail beginning November 1, 2002.

3 The Former Husband may purge himself of said contempt by payment of reimbursement to the Former Wife as and for reimbursement of educational expenses the sum of $120,291.31 and to the children's trusts the sum of $54,575.00 (which shall be applied and returned to each child's trust in accordance with disbursements made) within sixty (60) days of

the date of this Order. The Court shall consider any motion filed by the Former Husband within thirty (30) days to permit the trusts to reimburse the Former Wife all or a portion of the amount due, and to permit the trusts to pay all or a portion of the past and future educational expenses of the minor children together with a proposal by the Former Husband to repay the trusts any shortfall due to the trusts for principal or interest under a payment plan.

4. The Former Wife and Guardian Ad Litem/Attorney Ad Litem are entitled to attorney's fees and costs in connection with the making of this motion pursuant to paragraph 26 of the Marital Settlement Agreement. The Court reserves jurisdiction as to the amount of the attorney's fees and costs to be awarded.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this day of 5th of August, 2002.



CIRCUIT COURT JUDGE

Copies furnished to:

Bette Ellen Quiat, Esq., 8525 SW 92nd Street, Suite B-5, Miami, FL 33156
Montgomery Blair Sibley, 14512 Lee Road, Suite H, Chantilly, VA 20151
Dirk Lorenzen, Esq., 44 West Flagler Street, Suite 1000, Miami, FL 33130

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER ON FORMER WIFE'S MOTION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT DATED JANUARY 10, 2002 AND FORMER WIFE'S AMENDED MOTION FOR CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT DATED APRIL 17,2002

THIS MATTER having come on to be heard on June 4, 5, 6, and 7, 2002 and July 1, 2002 upon the Former Wife's Motion for Contempt for Failure to Pay Child Support dated January 10, 2002 and Former Wife's Amended Motion for Contempt for Failure to Pay Child Support dated April 17, 2002, together with other motions, the Court finds as follows:

A. The parties were divorced by Final Judgment of Dissolution of Marriage entered on September 20, 1994 which incorporated the Marital Settlement Agreement of the parties dated September 20, 1994.

B. Pursuant to the Marital Settlement and Final judgment, paragraph 12, if the minor children's primary physical residence is with the Mother, and the Father should

move out of the South Florida area so that the Husband cannot share in the day-to-daycare and parenting of the children, the Former Husband was to pay to the Former Wife not less than the sum of $4,000.00 per month for all three (3) children (or divided into thirds one-third for each child) until the completion of their individual college educations, as child support in addition to all of the Former Husband's other obligations set forth in the Marital Settlement Agreement.

C. The Former Husband voluntarily chose to move out of the South Florida area in May, 2000, and has not shared in the day-to-day care and parenting of the children since said date.

D. The Former Husband has not furnished any child support to the Former Wife since May, 2000.

E. The Former Husband is in arrears in child support in the amount of $4,000.00 a month for twenty-five (25) months during which he has not been in South Florida and the children's primary physical residence has been with the Former Wife.

F. The Court has reviewed the Former Husband's initial Financial Affidavit filed September 20, 1994 which reflects a gross income of $4,600.00 and a net income of $3,460.00 per month. It states monthly expenses of $9,232.00 per month. The Husband has filed subsequent affidavits in these proceedings including an affidavit dated June 10, 1999 showing a net income of $2,918.00 per month, living expenses of $5,351.00 per month and a negative net worth of $121,900.00. The Former Husband's supplemental financial affidavit filed on
October 19, 1995 shows a net income of negative $1,435.00 per month, monthly expenses of $6,000.00 per month and a negative net worth of $57,400.00.

The Former Husband testified that his present gross income was $37,500.00 annually from his employment (business owned by his father), and that his current wife's gross income was also in excess of $30,000.00. Additionally, the Former Husband continues to practice law and has taken in retainers of more than $17,000.00 so far this year. The Former Husband has not produced one check or bank statement. Instead he has produced computer generated ledger sheets allegedly from Alodus Corporation, no paycheck stubs for hint or his wife, no credit card statements, no bank statements or tax returns.

G. The Former Husband is currently living in a home his father recently purchased and testified he is paying rent to his father of $2,500.00 per month which the Court notes, at times, has been paid by the corporation as shown on the Former Husband's Notice of Filing Documents dated June 24, 2002. He runs a company purchased by his father. The Former Husband has the use of a company credit card, for which he has refused to supply statements. The company has paid filing fees and costs in this proceeding. The company has paid rental cars for the Former Husband when lie comes to Miami for hearings. His father furnishes him an apartment in Coconut Grove when he comes to Miami. His wife drives a BMW. His child, Sasha, is in private day care/school. His wife saves money for Sasha's future education.

H. The $200,000.00 loan from his father, Hai-per Sibley, listed on the Former Husband's June 10, 1999 Financial Affidavit has been satisfied and no longer exists.

I. The Former Husband claims he has given the sterling silver he received in the dissolution, which was valued at $15,900.00 according to the Memorandum of Understanding previously filed in the case, to his current wife.

J. Despite showing deficits of

$50,000.00-$100,000.00 annually to live, the Former Husband has no debt other than the court-ordered judgments arising out of litigation with his Former Wife.

K. The Former Husband has not demonstrated any substantial change in circumstances in his income or lifestyle from the time he entered into the Marital Settlement Agreement to the present time.

L. The Former Husband's ability to pay the child support agreed to by him at the time of the Marital Settlement Agreement and subsequently ratified and approved by him in the Stipulation of Settlement between Barbara Sibley and Montgomery Blair Sibley which incorporated all prior orders ratified by Court Order dated February 17, 2000 has not substantially changed and he has and has had the ability to pay said support.

WHEREFORE, IT IS ORDERED AND ADJUDGED as follows:

1. The Former Husband, MONTGOMERY BLAIR SIBLEY, is in contempt of this Court for failure to pay child support of $4,000.00 per month for 25 months pursuant to the Final Judgment.

2. The Former Husband owes to the Former Wife the sum of $100,000.00 as and for past due child support.

3. The Former Husband at all times from May, 2000 had the present financial ability to pay but wilfully or intentionally failed and refused to do so and wilfully violated the Order of this Court.

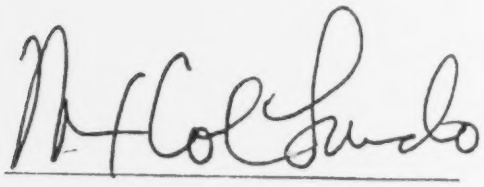
4. The Former Husband is hereby sentenced to ninety (90) days in the Dade County jail beginning January 1, 2003, unless prior to that time the Former Husband chooses to purge himself of contempt as follows:

a. Payment to the Former Wife of the sum of $30,000.00 on October 1, 2002, $30,000.00 on November 1, 2002 and $40,000.00 on December l, 2002, and remaining current in his child support of $4,000.00 per Month.

5. Any Petition for Modification filed by the Former Husband is denied.

6. The Former Wife is entitled to attorney's fees and costs. The Court reserves jurisdiction as to the amount.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 5th day of August, 2002.



CIRCUIT COURT JUDGE

Copies furnished to:

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Montgomery Blair Sibley, 14512 Lee Road, Suite H, Chantilly, VA 20151
Dirk Lorenzen, Esq., 44 West Flagler Street, Suite 1000, Miami, FL 33130

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO. 94-18177 FC 19

IN RE: The Marriage of
BARBARA SIBLEY
Petitioner,
and
MONTGOMERY BLAIR SIBLEY
Respondent.

ORDER GRANTING PETITION FOR MODIFICATION OF PRIMARY PHYSICAL RESIDENCE, AND DESIGNATION OF SOLE RESPONSIBILITY AS TO THE MINOR CHILDREN, ELIZABETH MASON SIBLEY AND MONTGOMERY BLAIR SIBLEY, JR., AND ENFORCEMENT OF THE FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS MATTER coming on to be heard on June 4, 5, 6 and 7, 2002 and,July'1, 2002 upon the Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage, and the Court having heard the report and recommendation of the Guardian ad Litem, and having had the opportunity to listen to the testimony and view the demeanor of the witnesses, and heard the argument of counsel, and in addition having taken judicial notice of the prior orders of the Court in this case, finds as follows:

The parties have extensively litigated the custody of the

two minor children, ELIZABETH MASON SIBLEY (Liza) and MONTGOMERY BLAIR SIBLEY, JR. (Monty). The parties entered into a Marital Settlement Agreement, which was incorporated into the Final Judgment. Pursuant to this agreement, "the father's residence shall be the primary physical residence of the children. The father's residence shall be in the vicinity of the children's private schools."

The father left South Florida in May, 2000, leaving the children with the mother and without notice. The evidence demonstrates that it was the father's intent to have the children make their primary residence with the Former Wife when he moved to Washington. Based on the evidence, the father attempted to use custody of the children as a bargaining chip to relieve himself of the financial obligations he bargained for in the Marital Settlement Agreement.

Additionally, the Marital Settlement Agreement provides for the father's relocation out of the State of Florida.

> If the minor children's primary physical residence is with the mother and the father should move out of the South Florida area, so that husband cannot share in the day to day care of the children, husband shall pay to the wife not less than the sum of $4,000 per month for all three children (or divided into third (1/3) for each child until the completion of their individual college educations) as child support in addition to all of husband's other obligations herein recited. Regardless of any other provision herein the. support paid (or value thereof) by husband shall not be less in value than set forth in the guidelines.

As there was a Marital Settlement Agreement, the first issue the court should address in determining custody of these

children is whether the Agreement of the parties addressed the issue. The court finds that the clauses noted above clearly reflect the intention of the parties. The Court finds that the original intent of the parties was that the children would reside with the father,, who would live near the schools. This was clearly done for the educational benefit of the children and the convenience of the parties. If the father was to move out of South Florida, the intent was that the children would reside with the mother and the father would pay support. It was a self-executing clause, as evidenced further by paragraph 3 of the agreement. "It is the agreement of the parties that the care, health, education and future of their children is primary among their concerns, and that the children **remain at the current educational institutions**..." (Emphasis added.) The court will enforce the agreement. Pursuant to the Marital Settlement Agreement, custody of the two minor children shall be with Mrs. Sibley.

This Court also finds that it is in the best interests of the children that custody be with the Former Wife.

The evidence shows that initially the Former Husband was a fine and caring father. Unfortunately, the Former's Husband's relationship with his children from this marriage declined when he remarried. This Court took testimony for several days that showed the difficulties of the relationship of the Former Husband and his older children. The Former Wife has had court ordered primary physical residence of the oldest child, MARGARET HARPER SIBLEY (Maggie), since March 26, 1999. There is no communication between Maggie and the Former Husband. Maggie is in therapy and on medication due to the trauma of the divorce.

Liza, the middle child, was in a private boarding school during the 2001-2002 school year, minutes from the Former Husband's current residence. He did not visit her.

Monty, the youngest child, refuses to speak with his father and refused to be in the same room as his father. The last visitation occurred Christmas time 2000. Monty had to be persuaded by the Guardian ad Litem to get on the airplane. The trip proved to be a disaster. Monty and Liza brought Christmas presents for their father, step-mother and half brother, Sasha. They did not receive any Christmas presents. Mr. Sibley testified that he considered the tickets to fly to see him to be their presents, although he did not tell the children that in advance of their visit. Sasha, Mr. Sibley's son with his current wife, received numerous presents and opened them in the presence of Monty and Liza. Mr. Sibley did not spend any time alone with Monty and Liza. The children were deprived of the individual attention of their father.

Additionally, Monty and Liza slept on the floor. They were expected to baby sit Sasha for part of the visit. Mr. Sibley did not spend any quality time with Monty and Liza. Prior to Mr. Sibley allowing them vacation time, Monty and Liza were forced to sit and write letters to their father to explain what was happening in their lives. This is one of many examples of a lack of meaningful communication. There was no attempt to have a conversation.

After this visit, there has been no contact between Monty and his father. Mr. Sibley testified that he sent Monty a book for his birthday. Monty did not send him a thank you note. As Monty did not behave in an acceptable manner, Mr. Sibley does not wish to contact Monty until he apologizes. Mr. Sibley testified that he was willing to sacrifice his relationship with his son over a principle.

Mr. Sibley's relationship with Liza is also strained. As noted earlier, he did not visit her when she was attending school minutes away. There was testimony that there was a birthday dinner for Sasha, a toddler, with the family china and good silver, and presents, while Liza's birthday, during the same

period was ignored.

There was also testimony that there were two different categories of food in the refrigerator. There was the food that only Mr. Sibley, his new wife and Sasha could eat, and there was the food that Liza and Monty were allowed to eat. This court can not help but think of the Cinderella fairy tale. The overwhelming evidence reveals that these children were emotionally abused by Mr. Sibley.

Mr. Sibley has also failed to make arrangements for the payment of the children's education. Paragraph 6 of the Marital Settlement agreement states "Husband shall be responsible f0f, pay-16r and or arrange to pay for all education expenses of the children while and until they achieve a college degree." The paternal grandfather had historically paid for their education, as he does for most of his other grandchildren. The grandfather testified that he did not want Barbara Sibley to benefit from his paying for the children's education. The education benefits the children, not Barbara Sibley. The children suffer as a result of the hostility directed toward the mother and the failure to fund their educations. Mr. Sibley breached the Marital Settlement Agreement by failing to arrange for the payment of the children's education. He has not only failed to do so, he has interfered with the paternal grandfather's funding of the education.

The evidence and the course of conduct by Mr. Sibley with his children, convinces this Court that in great measure, Mr. Sibley's insistence on being primary residential parent has much more to do with money and the children's trust funds than his love for his children. It has more to do with a punishment of Barbara Sibley than the concern for the best interests of the children. His positions have been inconsistent. In a letter dated June 8, 2000 to Barbara Sibley, (Petitioner's exhibit C), he wrote "As to Liza, what purpose is served by transferring custody of her to you if she is going to be at

Madeira for the next four years anyhow?" On May 9, 2001 he wrote "I continue to object to Liza attending Madeira..." (Respondent's AA2).

Mr. Sibley seeks to use the older children as pawns in the game against Barbara Sibley or in an attempt to relieve himself of the financial obligations pursuant to the Marital Settlement Agreement. His attempt to litigate everything to death is due to Mr. Sibley's disinclination to pay child support and his need to exercise control over his children's lives and material wealth. If it were not so, he would have made the necessary contacts to continue his relationships with his older children, balancing their needs in some fashion, with the needs of his new family. Further evidence of using the children as pawns to avoid payment of child support is his letter to Barbara Sibley stating that he will continue to litigate until he is disbarred or she is bankrupt. This is not the behavior of someone who has the best interests of the children at heart.

Instead, Mr. Sibley has made no effectuate court ordered preconditions to visiting his children. He has not seen his children for approximately 18 months since they returned from a court ordered visitation in January, 2001. Whatever relationship they had prior to his moving away, which was already in disrepair, since the time that he remarried, has been ruptured, perhaps beyond repair. In actuality, Mr. Sibley has not taken any interest in the two minor children's health, education or welfare since he left Florida more than two years ago. His only interest in education is to insist that the children go to public school, so he will not have pay for their education. He has not paid any child support. He has litigated every issue and filed numerous frivolous motions and lawsuits. He has treated these children as objects to be negotiated, rather than children with emotions and needs.

WHEREFORE, IT IS ORDERED AND ADJUDGED that:

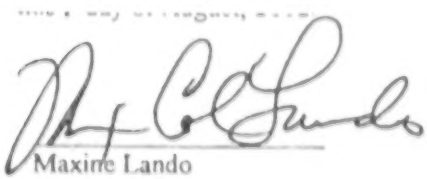
1. The Former Wife's Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage is hereby GRANTED. The Former Wife shall be the primary residential parent of the children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR.

2. The Former Wife, BARBARA SIBLEY, shall have sole parental responsibility of the minor children, as sole parental responsibility is in the minor children's best interest. The Former Wife shall continue to inform the Former Husband of all major issues regarding the children's health, education and welfare.

3. The Former Husband owes to the Former Wife the sum of $100,000 ($4,000.00 per month from June, 2000 through June 2002) as arrears for child support pursuant to the parties' Marital Settlement Agreement and Final Judgement. A Final Judgment shall be entered for said arrears. The issue of contempt is addressed by separate order.

4. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs.

DONE AND ORDERED in Miami-Dade County, Florida, this 9th day of August, 2002.



Maxine Lando
Circuit Court Judge

Copies furnished to:

Bette Ellen Quiat, Esq.
Montgomery Blair Sibley
Dirk Lorenzen, Esq.

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-12824
Non-Argument Calendar

D. C. Docket No. 03-21199-CV-JAL

MONTGOMERY BLAIR SIBLEY,

Plaintiff-Petitioner,

versus

FLORIDA SUPREME COURT, Harry Lee Anstead, in his capacity as Chief Judge and representative, THIRD DISTRICT COURT OF APPEAL, Alan R. Schwartz, in his capacity as Chief Judge and representative, *et al.*,

Defendants-Respondents.

Appeal from the United States District Court for the Southern District of Florida
(October 23, 2003)

Before DUBINA, MARCUS, and WILSON, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley appeals *pro se* the district court's dismissal for lack of subject matter jurisdiction of his 42

U.S.C. §§ 1981, 1983, 1985(3)[1] and 1988 suit seeking declaratory relief against the Florida Supreme Court, Florida's Third District Court of Appeal, and the11th Judicial Circuit Court in and For Miami-Dade County, Florida. Sibley has also identified Harry Lee Anstead, Alan R. Schwartz, and Maxine Cohen Lando in their capacities as judges of the courts. The district court found that it lacked subject matter jurisdiction due to the availability of an adequate remedy at law. Because we find that the *Rooker-Feldman* doctrine precludes Sibley's claims, we need not decide whether the district court was correct in finding that it lacked subject matter jurisdiction based on the existence of an adequate remedy at law.

Background and Discussion

After a number of adverse decisions rendered in various petitions, motions, and appeals related to disputes over a dissolution of marriage, Sibley filed an action in the district court seeking a declaratory judgment that the judicial system of the State of Florida violated his civil rights. In all, Sibley outlined in his complaint 27 separate claims for relief against three state judges, alleging that he was treated differently by state courts in Florida from others similarly situated, with no rational basis.

The district court found that Sibley's claims numbered 1 through 26 failed to state a claim under § 1983 because they failed to allege cognizable constitutional violations. The court also found that an adequate remedy at law existed for Sibley's

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[1] On appeal, Sibley only discusses his § 1983 claim. We will therefore not consider his other claims. See *Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (issues not argued on appeal are deemed abandoned).

claims against defendants Schwartz and Lando, because Sibley could appeal the disputed decisions to the Third District Court of Appeal or the Florida Supreme Court. Likewise, the district court found that Sibley had an adequate remedy at law for claim 27 as to Lando, because the decision could be appealed. The court then *sua sponte* dismissed the suit pursuant to FED. R. Civ. P. 12(h)(3).

We review a district court's finding that it lacks subject matter jurisdiction de novo. *See Dale v. Moore*, 121 F.3d 624, 626 (11th Cir. 1997). It is well settled that a federal district court lacks jurisdiction to review, reverse, or invalidate a final state court decision. See *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *D. C. Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).

Under the *Rooker-Feldman* doctrine, the authority to review final decisions from the highest court of the state is reserved to the Supreme Court of the United States. See *Hollins v. Wessel*, 819 F.2d 1073, 1074 (11th Cir. 1987) (per curiam). Federal district courts may not exercise jurisdiction to decide federal issues which are inextricably intertwined with a state court's judgment. *See Blue Cross & Blue Shield of Maryland, Inc. v. Weiner*, 868 F.2d 1550, 1554 (11th Cir. 1989). A district court engages in impermissible appellate review when it entertains a claim that the litigants did not argue in the state court, but is inextricably intertwined with the state court judgment. *See Feldman*, 460 U.S. at 483 n.16. The *Rooker-Feldman* doctrine applies as long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings. *See Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983).

We need not recite all of Sibley's 27 claims here; in each of his claims, he alleges that either the courts or one of the individual judges violated his rights by treating him differently than others similarly situated. Most notably, in his reply brief,

he clarifies that he seeks injunctive relief requiring that the state trial judge 1) grant him a hearing; 2) rule upon pending motions; 3) not hold Sibley in contempt; and 4) not revoke his travel privileges. Such action by a federal district court would amount to inappropriate review of state court decisions, particularly in light of the well settled principle that a plaintiff may not seek reversal of a state court judgment simply by casting his complaint in the form of a civil rights action. *See Sawyer v. Overton*, 595 F.2d 252, 252 (5th Cir. 1979) (per curiam).[2]

Further, Sibley had a reasonable opportunity to make any equal protection claims while litigating in the state court system. As brought in his federal suit, any such claims are "inextricably intertwined" with the state court proceedings, because such claims would only succeed to the extent that the state court wrongly decided the issues before it. *See Goodman v. Sipos*, 259 F.3d 1327, 1332 (11th Cir. 1997). All of the state court decisions disputed by Sibley could be appealed to the Florida Supreme Court, and then to the United States Supreme Court.

Because it is clear that the *Rooker-Feldman* doctrine forbids Sibley from bringing the current case, we affirm the district court's dismissal of Sibley's complaint.

Sanctions

The Third District Court of Appeal also seeks sanctions for Sibley's "ongoing filing of facially insufficient pleadings."

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[2] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all decisions of the former Fifth Circuit prior to the close of business on September 30, 1981.

The Federal Rules of Appellate Procedure provide that, following determination that an appeal is frivolous, we may, "after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages or single or double costs to the Respondent." FED. R. APP. P. 38.

Respondent's "recommendation" for sanctions came only in a short paragraph at the end of the conclusion of its Answer Brief In the absence of a separate, duly filed motion for sanctions pursuant to Rule 38, we cannot consider Respondent's request.

AFFIRMED.

IN THE DISTRICT COURT OF APPEAL OP FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 2003
DECEMBER 23, 2002
CASE NO.: 3D02-2308
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY,
Appellant,

v.

BARBARA SIBLEY,
Appellee.
_____/

Opinion filed December 3, 2003.

An Appeal from the Circuit Court for Dade County, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley, in proper person.
Jay M. Levy; Bette Ellen Quiat, for appellee.
Caruana & Lorenzen and Dirk Lorenzen, for children.

Before COPE, LEVY, and SHEVIN, JJ.

PER CURIAM.

Affirmed.

IN THE DISTRICT COURT OF APPEAL OP FLORIDA
THIRD DISTRICT

JANUARY TERM, A.D. 2004
FEBRUARY 12, 2004
CASE NO.: 3D02-2308
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY,
Appellant,

v.

BARBARA SIBLEY,
Appellee.
_____/

The Appellant's motions for rehearing, clarification, and request for written decision are denied. LEVY and SHEVIN, JJ., concur.

COPE, J., concurs in part, dissents in part, and states: While I am convinced that our previously-issued affirmance is correct based on the law and the facts of the case, in the exercise of discretion I would grant the motion for a written opinion, and dissent from the majority's denial of that motion. Apart from that, I concur in the denial of rehearing and clarification.

Appellant's motion for rehearing en banc is denied.

cc:
Montgomery Blair Sibley
Jay M. Levy
Dirk Lorenzen
Bette Ellen Quiat

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 03-14915
Non-Argument Calendar
D.C. Docket No. 03-21885-CV-PC

MONTGOMERY BLAIR SIBLEY,
a father representing a minor,
Alexander Blair Sibley,

Plaintiff-Appellant,

versus

MAXINE COHEN LANDO, in her
capacity as a Judge of the Circuit
Court of the 11`" Judicial District in
and for Miami-Dade County, Florida,

Defendant-Appellee.

/

Appeal from the United States District Court for
the Southern District of Florida
(February 20, 2004)

Before TJOFLAT, ANDERSON and WILSON, Circuit Judges.

PER CURIAM:

Montgomery Blair Sibley ("Plaintiff"), on behalf of his son Alexander Sibley ("Sibley"), filed a civil suit against the Hon. Maxine Cohen Lando, Judge of the Circuit Court of the 11 Judicial Circuit in and for Miami-Dade County, Florida

("Defendant"). Plaintiff argued that Defendant's child support orders against him, and her application of Fla. Stat. § 61.30(12),[1] violated his rights under the Fifth Amendment's due process clause, the Fourteenth Amendment's equal protection clause, provisions of the Florida Constitution, and Florida laws. In particular, Plaintiff argued that Defendant's orders illegally required him to pay more than his annual income in child support to the children of his previous marriage, which left him without funds to support Sibley, the offspring of his second marriage. During a hearing on Defendant's motion to dismiss the complaint, Plaintiff requested permission to amend his complaint in order to more specifically allege an overall constitutional challenge against Fla. Stat. § 61.30(12).

In a comprehensive order entered September 23, 2003, Record, Vol. 1 at 9, the district court concluded that, "under both the *Rooker-Feldman* and *Younger* abstention doctrines ... it would be inappropriate to exercise any subject matter jurisdiction that it may have over Plaintiff's federal claims asserted in this case." The court therefore granted Defendant's motion to dismiss and denied Plaintiff leave to amend. Plaintiff now appeals.

We conclude that the *Younger* doctrine required the district court to abstain for the reasons the court expressed in

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[1]Section 61.30(12) of the Florida Statutes provides that a court may consider the existence of other children who were born after a child support obligation arose when determining whether to grant an upward modification of a child support award. Fla. Stat. § 61.30(12)(a). However, the existence of subsequent children "may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award." Id. at § 61.30(12)(c).

its September 23 order. Plaintiff contends that the court abused its discretion in denying him leave to amend his complaint. We find no abuse of discretion; an amendment would be futile. AFFIRMED.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED

U.S. Constitution, Fourteenth Amendment, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Constitution, Article. VI, Clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Florida Statute, §61.16

(1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney's fees, suit money, and the cost to the other party of maintaining or defending any proceeding under this chapter, including enforcement and modification proceedings and appeals.

Florida Statute §61.30(12)

(12)(a) A parent with a support obligation may have other children living with him or her who were born or adopted after

the support obligation arose. If such subsequent children exist, the court, when considering an upward modification of an existing award, may disregard the income from secondary employment obtained in addition to the parent's primary employment if the court determines that the employment was obtained primarily to support the subsequent children.

(b) Except as provided in paragraph (a), the existence of such subsequent children should not as a general rule be considered by the court as a basis for disregarding the amount provided in the guidelines. The parent with a support obligation for subsequent children may raise the existence of such subsequent children as a justification for deviation from the guidelines. However, if the existence of such subsequent children is raised, the income of the other parent of the subsequent children shall be considered by the court in determining whether or not there is a basis for deviation from the guideline amount.

(c) The issue of subsequent children under paragraph (a) or paragraph (b) may only be raised in a proceeding for an upward modification of an existing award and may not be applied to justify a decrease in an existing award.

Rule 14(g)(i) Statement

The method or manner of raising the federal questions and the way in which they were passed on by the courts with a summary of the pertinent quotations of specific portions of the record with specific reference to the places in the record where the matter appears for each of the points raised in the "reasons for granting the writ" section of the petition. References to the page number are to points as they are found in the petition.

I. The Florida Family Court Proceedings Violated Father's Procedural Due Process Guarantees 5

The due process was initially raised in *Sibley v. Sibley*, Case Number 3D02-102, at page 6 of his initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 16 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

A. Delay in Conducting Change in Custody Proceedings Violates Due Process . . . 6

Father's "Motion for Contempt and Enforcement and to Modify Visitation Schedule" was filed on September 1, 2000. ("Father's Motion to Modify Visitation") (R-77)[2] and was never ruled upon. Subsequently, in *Sibley v. Sibley*, 3D00-2492 filed on September 6, 2000, Father sought (i) for entry of a writ of prohibition restraining the Honorable Maxine Cohen Lando, Circuit Court Judge of the 11th Judicial Circuit in and for Miami-Dade County, Florida, from presiding as a circuit judge in the case, (ii) entry of a writ of mandamus directing that the Father's minor children be returned to him pending resolution of the pending motions regarding primary residential custody of those children and (iii) entry of a writ of mandamus directing that a full evidentiary hearing be promptly held on the pending motions for residential custody and contempt specifically raising the due process rights of Father. The Third District Court of Appeal denied the petition *per curiam* without

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[2] References to (R-#) refer to the record on appeal prepared in Third District Court of Appeal Case Number 3D02-2308.

opinion which, under that court's holding in *Obanion v. State*, 496 So.2d 977, 980 (Fla. 3rd DCA 1986), *rev. denied*, 504 So.2d 769 (Fla. 1987), was "a denial of a petition for a writ of prohibition will, in fact, be a ruling on the merits, unless otherwise indicated." Subsequently, Father raised this issue in *Sibley v. Sibley*, 3D01-1358 on June 28, 2001 in a mandamus petition which sought the same relief as 3D00-2492, *supra*, as 11 months had transpired since Judge Lando's *de facto* termination of Father's right as primary residential custodian without a hearing or order. The Third District Court of Appeal denied the petition *per curiam* without opinion as before. Thereafter, Father raised this issue in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 6-11 of his initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 29-31 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

B. Judge Lando Improperly Limited Father's Presentation of Evidence . . 8

Oral objection denied by Judge Lando as to limitations on Father's presentation of evidence in his case-in-chief made by Father at time of hearing. (RII-October 8, 2001 Transcript, pp. 909-911). Additionally, Judge Lando silenced Father and denied him the ability even to proffer his objections to preserve them for appellate review. (R-II, April 30, 2001 Transcript, page 6; September 24, 2001Transcript, pp. 341-460; September 25, 2001 Transcript, p. 648; June 4, 2002 Transcript, pp. 8, 22, 27, 88-89; June 5, 2002 Transcript, pp. 114-127, 142, 145; July 1,

2002 Transcript, pp. 18-19). These issues were raised on appeal in Father's initial brief at pages 20-21 in *Sibley v. Sibley*, Case Number 3D02-2308, which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

C. Judge Lando Abdicated Her Responsibility By Her Verbatim Entry of the Proposed Orders from Mother's Counsel 8

This issue was first raised by Father raised by a motion to strike filed December 18, 2001, the proposed order based upon the alleged *ex parte* communication between Bette Quiat and Judge Lando which resulted in the *verbatim* adoption of Ms. Quiat's proposed order (R-126) which motion was ultimately denied 18 months later. (R-879). Judge Lando refused to set a hearing on this significant issue. (R1-Appendix, page 1, 12/18/01 entry). Thereafter, in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 15-18 of his initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 31-33 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

D. Judge Lando's Termination of Father's Parental Rights Violated Father's

Fundamental and Due Process Rights 9

This issue was raised in *Sibley v. Sibley*, Case Number: 3D02-102, at page 25 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 33-36 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

E. Lack of Notice to Father of the Expansion of the Hearings Beyond the July 27, 2000 Allegations Violated Father's Due Process Rights **10**

This issue was initially raised at the time of the hearing on September 24, 2001 by Father by oral objection which was denied. (September 24, 2001 Transcript, pp. 343-344; (September 24, 2001 Transcript, pp. 341-460, September 25, 2001 Transcript, p. 648). Thereafter, the issue was raised in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 13-15 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 23-26 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out

at *Appendix-34*.

F. Judge Lando Utilized Stale Evidence Which Caused Her To Mis-Recollect the Testimony **12**

Father initially raised this issue by oral objection which was denied by Judge Lando. (June 4, 2002 Transcript, p. 45). Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 18-20 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issues which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

G. The Bias of Judge Lando Against Father Violated Father's Due Process Rights **12**

Father initially raised these issues by motions to disqualify of December 15, 2000 (R-159), May 4, 2001 (R-264), October 24, 2001 (R-418), June 14, 2002 (R-744), July 15, 2002 (R-811), July 31, 2002 (R-688) which were all denied and the failure to rule on Father's motion to disqualify filed August 20, 2002, which has never been ruled upon. (R-882). Thereafter, these matters as of December 10, 2001, were raised in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 21-22 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Father also sought petitions for writs of prohibition against Judge Lando for each of the motions to disqualify her which petitions were denied *per curiam* without opinion as reported at *Sibley v. Sibley*, 814 So.2d 1054 (Fla. 3d DCA 2002)(table); *Sibley v. Sibley*, 793 So.2d 959 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 803

So.2d 738 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 795 So.2d 71 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 791 So.2d 481 (Fla. 3d DCA 2001)(table); *Sibley v. Sibley*, 771 So.2d 1175 (Fla. 3d DCA 2000)(table); *Sibley v. Sibley*, 751 So.2d 586 (Fla. 3d DCA 2000)(table). Also, Father raised these issues in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 26-28 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues which motion was denied *per curiam* without written decision on February 12, 2004.

H. Florida Public Policy Requires Attorney Fees and Costs To Be Borne By Mother 14

Father initially raised this issue by motion dated October 31, 2001. (R-428) Judge Lando, through her administrative assistant, advised Father Judge Lando would not consider such matters before August 2002. (R-688). Significantly, though asked to do so, Judge Lando in December 2001 refused to enter a submitted agreed-by-counsel-as-to-form order stating her intention to not consider the matter of attorney fees and costs for 9 months. (R-688). On September 9, 2002, Father again moved for pendente lite appellate attorney fees and costs before Judge Lando. Again, Judge Lando refused to set this motion for hearing and has not otherwise ruled upon it. Father thereafter moved for appellate attorney fees and costs on January 14, 2002 in Case 3D02-102 which motion was denied on January 17, 2002, *per curiam* without written decision. Also, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 36-37 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised these issues

which motion was denied *per curiam* without written decision on February 12, 2004.

II. The Florida Family Court Proceedings Violated Father's Substantive Due Process Guarantees 15

Father initially raised this issue in *Sibley v. Sibley*, Case Number: 3D02-102, at pages 22-25 of Father's initial brief on appeal of the interlocutory order appeal set out in at *Appendix-11*. There the Third District Court of Appeal refused to address the issue. Again, Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 47-60 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

III. Father's Support Obligation Offends Equal Protection 17

Father initially raised this issue in his Supplemental Petition for Modification Of Child Support filed on August 4, 2001, claiming that Father "has fathered another child who must be accorded equal protection under the laws and constitution of the State of Florida and the U.S. Constitution to a proportionate share of Respondent's financial obligations". (R-1062). That motion was denied without explanation by Judge Lando. (R-1022, p. 5, ¶5; *Appendix-25*). Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 64-65 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was

denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

IV. Father's Support Obligations Violate Due Process 20

Father initially raised this issue in his Supplemental Petition for Modification Of Child Support filed on August 4, 2001. (R-1062). That motion was denied without explanation by Judge Lando. (R-1022, p. 5, ¶5; *Appendix-25*). Father raised this issue in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 60-76 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Last, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

V. Father was Improperly Prohibited From Suing in Other Courts and Was Improperly Sanctioned 22

Father initially raised the first issue of being barred from suing in other courts by Judge Lando's (R-295) in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 41-42 of his initial brief on appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Again, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

Father initially raised the issue of being sanctioned for failing to appear for a hearing (R-554; R-589) in *Sibley v. Sibley*, Case Number 3D02-2308, at pages 43-44 of his initial brief on

appeal which matter was decided *per curiam* without opinion and is set out at *Appendix-33*. Again, in 3D02-2308 Father in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, again raised this issue which motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

VI. The Florida Supreme Court and the Third District Court of Appeals Violated Father's Equal Protection Rights 23

Father raised this issue of the denial of equal protection by the entry of *per curiam* decisions without written explanation in his motion for reconsideration, rehearing, rehearing *en banc* and for a written decision filed on December 10, 2003, stating at pages 4-5 of the motion that "by entering a *per curiam* affirmance without written opinion, this panel violates Father's Equal Protection guarantees contained in both the Florida and Federal Constitutions." A full detail of the various violations were set out in the remaining 150 pages of the motion. That motion was denied *per curiam* without written decision on February 12, 2004, set out at *Appendix-34*.

(3)

Supreme Court, U.S.
FILED
MAR 26 2004
OFFICE OF THE CLERK

No. 03-1430

In The
Supreme Court of the United States

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

BARBARA SIBLEY,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida, Third District

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT

In the instant case, Petitioner was afforded a trial on the merits with regard to Respondent's Petition for Permanent Change of Custody of the parties' minor children and full plenary review of the trial court's ruling on this petition which permanently changed custody from Petitioner to Respondent.[1] That ruling was affirmed per curiam without opinion by the Florida District Court of Appeal, Third District. *Sibley v. Sibley*, 866 So.2d 1223 (Fla. 3DCA 2003).[2] As there is no written opinion to be reviewed, the decision neither conflicts with the decision of another court nor decides an important federal question in a way which conflicts with a decision of this Court. For this reason, Respondent respectfully urges this Honorable Court to deny the Petition for Writ of Certiorari.

---

[1] Petitioner has obtained appellate review of various interlocutory rulings of the family court relating to custody and support. In *Sibley v. Sibley*, 815 So.2d 673 (Fla. 3DCA), *rev. den.* 833 So.2d 774 (Fla. 2002) Petitioner appealed the family court's temporary change of custody from Petitioner to Respondent. In *Sibley v. Sibley*, 816 So.2d 136 (Fla. 3DCA 2002), Petitioner appealed the family court's ruling ordering him to pay the educational expenses of the parties' minor children as per the terms of the Marital Settlement Agreement. The state appellate court affirmed both rulings.

[2] As the state intermediate appellate court's affirmance was without written opinion, the Florida Supreme Court lacked jurisdiction to review the decision. *Jenkins v. State*, 385 So.2d 1356 (Fla. 1980); Fla.R.App.Pro. 9.030(a). For this reason, the decision of the intermediate state appellate court is the decision "by the highest court of a state in which a decision can be had" for purposes of this court's jurisdiction. 28 U.S.C. §1257.

RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

A final judgment of divorce was entered by the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Family Division (hereinafter the "trial court") which incorporated a Marital Settlement Agreement. This agreement provided that Petitioner's residence was the primary residence of the children and was to be located in the vicinity of the children's private schools. The children resided with Respondent over the weekends.

On July 31, 2000, Respondent filed an Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow the Minor Children to be Enrolled in Private School and Prohibiting Their Removal to Washington, D.C. In this motion, Respondent alleged there had been a substantial change of circumstances regarding the minor children in that Petitioner had abandoned the minor children physically, financially, and emotionally. Respondent alleged it was in the best interests of the minor children that a temporary order be entered allowing her residence to be the primary physical residence of the minor children until a petition for modification could be filed and the merits of such petition determined.

After an extensive evidentiary hearing on the merits of the emergency motion, the trial court granted

Respondent's emergency motion (App. 1-7).[3] The order contained the following findings:

> D. The Former Husband may have had a relationship with the minor children in the past, but his actions and words since his remarriage and birth of his son, SASHA, have continuously negatively escalated to the point where it would be detrimental for the children to be with their father.
>
> E. The Court has heard testimony of the children being physically hit.
>
> F. Emotionally, the children have been devastated by the Former Husband's behavior such as keeping the children home from school as punishment, using the children as indentured servants to babysit his new child, failing to have any contact whatsoever with the children for months at a time, and economically depriving the children of necessities and interfering with their education.
>
> G. The Court has had the unique opportunity to view the correspondence between the parties. The Former Husband's attempt to gain financial concessions from the Former Wife in exchange for a Court order confirming the primary physical residence of the children to the Former Wife reveals a deliberate attempt to "sell" the children to the Former

[3] The letters "App." shall represent the Appendix to this Brief in Opposition to the Petition for Writ of Certiorari.

Wife for the Former Husband's own economic benefit.

H. The Former Husband has shown preferential treatment to his new child, SASHA, economically, emotionally and in every way possible to the detriment of the children of this marriage.

L. The Former Husband has put his new wife before his children, on an occasion where the Former Husband was to visit with LIZA at boarding school, he canceled the visitation because SASHA was ill and would not visit without SASHA and his new wife accompanying him to visit LIZA.

M. The Former Husband has divested himself of funds in order not to pay child support.

N. The Former Husband delivered all of the children's belongings to the Former Wife prior to his leaving Miami. This Court believes that the parties as well as the children had a clear understanding that the children would remain with the Former Wife as the Former Husband departed to Washington, D.C. with his new wife and child. The Former Husband obtained a one-bedroom apartment upon his relocation to Washington, D.C. which this Court finds supports the understanding of the parties that the children would remain with the Former Wife.

R. Both children are in fear of their father.

(App. 2-5)

This order was affirmed on appeal by the District Court of Appeal of Florida, Third District. *Sibley v. Sibley*, 816 So.2d 136 (Fla. 3DCA 2002) (App. 9-10).

Between the filing of the motion for temporary relief and the trial court's order thereon, Respondent filed a Petition for Modification of Primary Physical Residence and Designation of Sole Responsibility as to the Minor Children of the Marriage Based Upon a Substantial Change in Circumstances. After a multi-day evidentiary hearing on this Petition for Modification, the trial court granted the petition (App. 10-17). The order granting this petition contains the following pertinent findings:

> As there was a Marital Settlement Agreement, the first issue the court should address in determining custody of these children is whether the Agreement of the parties addressed the issue. The court finds that the clauses noted above clearly reflect the intention of the parties. The Court finds that the original intent of the parties was that the children would reside with the father, who would live near the schools. This was clearly done for the educational benefit of the children and the convenience of the parties. If the father was to move out of South Florida, the intent was that the children would reside with the mother and the father would pay support. It was a self-executing clause, as evidenced further by paragraph 4 of the agreement. "It is the agreement of the parties that the care, health, education and future of their children is primary among their concerns, and that the children **remain at the current educational institutions. . . .** " (Emphasis added). The court will enforce the agreement. Pursuant to the Marital

Settlement Agreement, custody of the two minor children shall be with Mrs. Sibley.

This Court also finds that it is in the best interests of the children that custody be with the Former Wife . . .

The evidence and the course of conduct by Mr. Sibley with his children, convinces this Court that in great measure, Mr. Sibley's insistence on being primary residential parent has much more to do with money and the children's trust funds than his love for his children. It has more to do with a punishment of Barbara Sibley than the concern for the best interests of the children . . . Mr. Sibley seeks to use the older children as pawns in the game against Barbara Sibley or in an attempt to relieve himself of the financial obligations pursuant to the Marital Settlement Agreement. His attempt to litigate everything to death is due to Mr. Sibley's disinclination to pay child support and his need to exercise control over his children's lives and material wealth. If it were not so, he would have made the necessary contacts to continue his relationships with his older children, balancing their needs in some fashion, with the needs of his new family. Further evidence of using the children as pawns to avoid payment of child support is his letter to Barbara Sibley stating that he will continue to litigate until he is disbarred or she is bankrupt. This is not the behavior of someone who has the best interests of the children at heart.

Instead, Mr. Sibley has made no effectuate (sic) court ordered preconditions to visiting his children . . . In actuality, Mr. Sibley has not taken any interest in the two minor children's health, education or welfare since he left Florida

> more than two years ago. His only interest in education is to insist that the children go to public school, so he will not have to pay for their education. He has not paid any child support. He has litigated every issue and filed numerous frivolous motions and lawsuits. He has treated these children as objects to be negotiated, rather than children with emotions and needs.[4]

(App. 12-16)

This appeal was affirmed per curiam without opinion by the District Court of Appeal of Florida, Third District (App. 18).

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE PETITION

A.

There must be a compelling reason for this Court to grant a petition for writ of certiorari. The principal purpose for certiorari review by this Court is to resolve conflicts among the various circuits and state courts concerning the meaning of provisions of federal law as opposed to conducting plenary appellate review of a trial court's decision. *Braxton v. United States*, 500 U.S. 344 (1991). This exacting standard cannot be satisfied in the case at bar because there is no written opinion by the

[4] The District Court of Appeal of Florida, Third District in *Sibley v. Sibley*, 833 So.2d 847, 849 (Fla. 3DCA 2002), *rev. den.* 854 So.2d 660 (Fla. 2003), *cert. den.* ___U.S.___, 124 S.Ct. 1074, 157 L.Ed.2d 895 (2004) held that the Petitioner has a "stubborn, self-immolating hatred of and vendetta against his ex-wife."

court below. For this reason, there can be no conflict between the decision rendered below and that of any other court on an issue of constitutional or federal law. The Petition for Writ of Certiorari should be denied.

B.

Supreme Court Rule 10 indicates that a writ of certiorari will rarely be granted when the asserted error consists of a misapplication of a properly stated rule of law. The petition in this case violates this rule because what Petitioner really seeks is a second appeal as to each of the multiple rulings which led to the trial court's order granting Respondent's Petition for Modification.

The Petition for Writ of Certiorari directly addresses the trial court's grant of a permanent change of custody to Respondent and contains little or no mention of the appellate court's affirmance of that order, even though it is the appellate court's ruling that is the predicate to this Court's jurisdiction. Through his petition, Petitioner challenges multiple actions of the trial court which Petitioner contends are either contrary to the substantive law of Florida or a violation of his due process and equal protection rights. However, the findings of the trial court both in the Order Granting Former Wife's Motion for Temporary Physical Residence of the Minor Children (App. 1-7) and the Order Granting Petition for Modification of Primary Physical Residence (App. 10-17), amply reflect a substantial evidentiary basis for the rulings of the trial court which were affirmed by the appellate court. There is no compelling reason for this Court to exercise jurisdiction over the instant cause.

C.

With regard to the contention that the amount of Petitioner's child support obligation offends equal protection, this support obligation was agreed to by Petitioner in the marital settlement agreement. The order of the trial court which is the genesis of the instant Petition for Writ of Certiorari, granted a Petition for Modification of Primary Physical Residence. The order does not rule on any petition to modify child support nor was any such issue tried before the trial court. Consequently, this point is not preserved for review and has not yet been adjudicated by the trial court.[5]

D.

Petitioner argues that enforcement of the agreed upon child support obligation contained in the parties' marital settlement agreement and adopted by the trial court in its final judgment violates equal protection because the minor children of the parties' marriage benefit disproportionately when compared to Petitioner's child from his second marriage. This argument is based upon a faulty predicate because the trial court has repeatedly found that Petitioner has the ability to pay the child support. *See: Sibley v. Sibley*, 833 So.2d 847 (Fla. 3DCA 2002), *rev. den.* 854 So.2d 660 (Fla. 2003), *cert. den.* ___ U.S. ___, 124 S.Ct. 1074, 157 L.Ed.2d 895 (2004). For this reason, assuming Petitioner has standing to raise this argument, there is no substance to Petitioner's argument that the child of his second marriage has been denied equal protection due to

---

[5] Such a motion presently is pending before the trial court but a trial on said motion has yet to occur.

the trial court's enforcement of the child support in the case at bar.

E.

Petitioner complains that the form of the decision of the appellate court below, a per curiam affirmance without opinion, violates equal protection. However, Petitioner's equal protection analysis is deficient because it fails to establish that the instant case falls within a suspect classification requiring strict scrutiny. For this reason, the equal protection claim is subject to a rational basis analysis and Petitioner has not established that the appellate court's decision below to affirm without opinion in this case is irrational.

The criteria utilized by Florida appellate courts in determining whether to issue a written opinion in Florida were addressed by the Court in *Elliott v. Elliott*, 648 So.2d 137, 138 (Fla. 4DCA 1994):

> It is fundamental black letter law that a per curiam disposition affirming a trial court order without a written opinion, occurs when the points of law raised are so well settled that a further writing would serve no useful purpose. The sheer volume of appeals, in and of itself, would seemingly indicate the impossibility of a written opinion on every affirmance.

To the same effect is *Taylor v. Knight*, 234 So.2d 156, 157 (Fla. 1DCA 1970):

> This court and not the attorney for the losing party is charged with the responsibility of deciding which cases merit and warrant a full written opinion upon the basis of that opinion's contribution to the jurisprudence of this State and those

> cases of great public interest. This Court is not now denying and has not denied appellants herein any constitutional right and has not overlooked or failed to consider the jurisprudence of this State in ruling upon the merits of the appeal by deciding a case without a written opinion.

The appellate court below by not issuing a written opinion in the case at bar, had to have concluded that a written opinion in this case would add nothing to the jurisprudence of the State of Florida. This conclusion has a rational basis given the specificity of the findings of the trial court as to the reasons for its rulings. Petitioner has failed to present an important federal question in his Petition for Writ of Certiorari worthy of the attention of this Honorable Court.

CONCLUSION

For all the foregoing reasons, the Former Husband's Petition should be denied.

Dated: May 26, 2004

Respectfully submitted,

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

IN RE: The Marriage of:

BARBARA SIBLEY,

Petitioner/Former Wife,

and

MONTGOMERY BLAIR SIBLEY,

Respondent/Former Husband /

FAMILY DIVISION

CASE NO.:
94-18177 FC19

ORDER GRANTING FORMER WIFE'S EMERGENCY MOTION FOR TEMPORARY PRIMARY PHYSICAL RESIDENCE OF THE MINOR CHILDREN AND TO ALLOW MINOR CHILDREN TO BE ENROLLED IN PRIVATE SCHOOL AND PROHIBITING THE REMOVAL OF THE CHILDREN TO WASHINGTON, D.C. AND DENYING RESPONDENT'S EMERGENCY MOTION FOR CONTEMPT AND ENFORCEMENT AND TO MODIFY VISITATION SCHEDULE

THIS MATTER coming on to be heard on September 24 and 25, 2001 and October 8, 2001, upon the Former Wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor Children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington, D.C., and Respondent's Emergency Motion for Contempt and Enforcement and to Modify Visitation Schedule, and the Court having heard the testimony, argument and being duly advised in the premises, finds as follows:

A. This matter has had a significant amount of motions and activity before the Court and the Court has

had the opportunity at length to observe the demeanor of the parties, to intimately review their actions and their words to each other and to their children through testimony and through written correspondence introduced as evidence.

B. The Court has reviewed the lengthy correspondence between the parties, prior Orders and all of the evidence submitted in this matter.

C. This Court has been in the unique position of observing not only the context of the words spoken during testimony, but the demeanor and behavior of the parties.

D. The Former Husband may have had a relationship with the minor children in the past, but his actions and words since his remarriage and birth of his son, SASHA, have continuously negatively escalated to the point where it would be detrimental for the children to be with their father.

E. The Court has heard testimony of the children being physically hit.

F. Emotionally, the children have been devastated by the Former Husband's behavior such as keeping the children home from school as punishment, using the children as indentured servants to babysit his new child, failing to have any contact whatsoever with the children for months at a time, and economically depriving the children of necessities and interfering with their education.

G. The Court has had the unique opportunity to view the correspondence between the parties. The Former Husband's attempt to gain financial concessions from the Former Wife in exchange for a Court order confirming the

primary physical residence of the children to the Former Wife reveals a deliberate attempt to "sell" the children to the Former Wife for the Former Husband's own economic benefit.

H. The Former Husband has shown preferential treatment to his new child, SASHA, economically, emotionally and in every way possible to the detriment of the children of this marriage.

I. The Court has listened to the recommendations of the Guardian Ad Litem in this matter. The Court selected Dirk Lorenzen as a Guardian Ad Litem because of his qualifications as a psychologist, although not licensed to practice in the State of Florida, and his human ability to bond with children of this age. The Guardian Ad Litem has done a thorough and complete job in reviewing this matter and making his recommendations.

J. The Former Wife has done everything she could to foster a relationship between the Former Husband and the minor children. She sent flowers on behalf of the children to the Former Husband's new wife at the time of their marriage, purchased gifts for the Former Husband, his new child and new wife, kept the Former Husband informed of all activities of the children, and ultimately made sure that the children went on the Christmas visitation in 2000 despite monumental resistance from the children. The Former Wife's behavior has been positive and encouraging to the children despite the Former Husband's actions.

K. During Christmas, 2000, this Court ordered the children to visit with their father in the hopes of repairing the relationship. The visitation not only failed to repair their relationship, it destroyed any hope that the Former

Husband could have a relationship with his children. As soon as the children got off the plane and arrived at the Former Husband's residence, they were made to sit down and write numerous letters to their father describing each month's activities during which they had not seen him. They were ignored for Christmas and did not receive any gifts, although the Former Husband claimed that their plane flight was their gift. Although it was Liza's birthday on December 26th, she did not receive a gift, although the Former Husband claimed that her plane flight was her Christmas and birthday gift. On the other hand, it was SASHA's birthday during the children's visit, and they watched as SASHA opened presents and enjoyed a celebration for his birthday.

L. The Former Husband has put his new wife before his children. On an occasion where the Former Husband was to visit with LIZA at boarding school, he canceled the visitation because SASHA was ill and would not visit without SASHA and his new wife accompanying him to visit LIZA.

M. The Former Husband has divested himself of funds in order not to pay child support.

N. The Former Husband delivered all of the children's belongings to the Former Wife prior to his leaving Miami. This Court believes that the parties as well as the children had a clear understanding that the children would remain with the Former Wife as the Former Husband departed to Washington, D.C. with his new wife and child. The Former Husband obtained a one-bedroom apartment upon his relocation to Washington, D.C. which this Court finds supports the understanding of the parties that the children would remain with the Former Wife.

O. What is clear to this Court is that this case is about money. It is about MONTGOMERY BLAIR SIBLEY not wanting to face a Court determination for spending his children's trust money and not wanting to pay child support. The Former Husband has even manipulated his own father into not paying the tuition of the children and jeopardizing their educations.

P. The Former Husband has failed to furnish the Former Wife with insurance cards for the minor children's health care.

Q. The minor child, MONTGOMERY BLAIR SIBLEY, has threatened to run away if he is required to visit with his father.

R. Both children are in fear of their father.

S. The Court heard the testimony of the minor child, ELIZABETH MASON SIBLEY, and observed her demeanor and visible and palpable fear and dread towards her father.

T. The Former Husband has used his funds to provide schooling for SASHA and schooling for his new wife despite the Final Judgment which requires him to provide funds for the children of this marriage's education.

U. The Former Wife discussed and communicated the desire of the minor child, ELIZABETH MASON SIBLEY, to attend Madeira School which the parties' oldest child, MARGARET, had attended and graduated. The correspondence between the parties indicates the Former Husband's assent conditioned on the Former Wife's agreeing to other issues for his economic benefit. The child has been attending Madeira School and has been doing well.

V. The Court finds there has been a substantial change of circumstances sufficient to require the granting of the motion.

THEREFORE, IT IS ORDERED AND ADJUDGED:

1. That the Former Wife's Emergency Motion for Temporary Primary Physical Residence of the Minor Children and to Allow Minor children to be Enrolled in Private School and Prohibiting the Removal of the Children to Washington, D.C. is hereby GRANTED.

2. The Former Husband shall immediately furnish to the Former Wife insurance cards for the children.

3. The Former Husband's Emergency Motion for Contempt and Enforcement and to Modify Visitation Schedule is hereby DENIED.

4. No visitation shall take place between the Former Husband and the minor children until therapy takes place.

5. All testimony taken in this hearing shall be adopted and made a part of the hearing on the Former Wife's Petition for Modification of Primary Physical Residence.

6. The Court reserves jurisdiction to consider further recommendations of the Guardian Ad Litem as to the specific type of therapy which should occur prior to any visitation taking place.

7. The minor child, ELIZABETH MASON SIBLEY, shall be enrolled at Madeira School for this school year.

8. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs.

DONE AND ORDERED in Chambers, at Miami, Miami-Dade County, Florida, this 10 day of December, 2001.

Maxine Cohen Lando
CIRCUIT COURT JUDGE

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NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA
THIRD DISTRICT
JANUARY TERM, A.D. 2002

MONTGOMERY BLAIR SIBLEY,

Appellant,

vs.

BARBARA SIBLEY

Appellee.

CASE NO. 3D02-102

LOWER TRIBUNAL NO. 99-21008

Opinion filed March 27, 2002

An appeal from the Circuit Court for Dade County, Florida, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley, in proper person.

Bette E. Quiat; Jay M. Levy, for appellee.

Before GREEN and SHEVIN, JJ., and NESBITT, Senior Judge.

PER CURIAM.

The trial court entered its ruling after a lengthy evidentiary hearing, and father who appeals has not favored us with a trial transcript. The trial court's decision

arrives here clothed with a presumption as to its correctness, and the burden is on the appellant to demonstrate error. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). As here, where a transcript of the testimony or other substitute is not supplied to the appellate court, the court must accept the factual findings in the judgment as being correct and assume they are supported by competent substantial evidence. *See Beniaminov v. Beniaminov*, 789 So. 2d 494 (Fla. 3d DCA 2001). The appellant's failure to provide us with a complete transcript of the testimony impacts upon all of the issues raised by him. For example, appellant complains that he has not had a meaningful hearing, that he was deprived of the opportunity to present his case, and that he was limited in the evidence he could introduce. With no transcript, or proffer, however, there is no way for this court to decide if error has occurred. *See Lucas v. State*, 568 So. 2d 18 (Fla. 1990).

Affirmed.

IN THE CIRCUIT COURT
OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

IN RE: The Marriage of

BARBARA SIBLEY,

Petitioner/Former Wife,

and

MONTGOMERY BLAIR SIBLEY,

Respondent/Former Husband /

FAMILY DIVISION

CASE NO.:
94-18177 FC 19

ORDER GRANTING PETITION FOR MODIFICATION OF PRIMARY PHYSICAL RESIDENCE, AND DESIGNATION OF SOLE RESPONSIBILITY AS TO THE MINOR CHILDREN, ELIZABETH MASON SIBLEY AND MONTGOMERY BLAIR SIBLEY, JR., AND ENFORCEMENT OF THE FINAL JUDGMENT OF DISSOLUTION OF MARRIAGE

THIS MATTER coming on to be heard on June 4, 5, 6 and 7, 2002 and July 1, 2002 upon the Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage, and the Court having heard the report and recommendation of the Guardian ad Litem, and having had the opportunity to listen to the testimony and view the demeanor of the witnesses, and heard the argument of counsel, and in addition having taken judicial notice of the prior orders of the Court in this case, finds as follows:

The parties have extensively litigated the custody of the two minor children, ELIZABETH MASON SIBLEY (Liza) and MONTGOMERY BLAIR SIBLEY, JR., (Monty). The parties entered into a Marital Settlement Agreement, which was incorporated into the Final Judgment. Pursuant to this agreement, "the father's residence shall be the primary physical residence of the children. The father's residence shall be in the vicinity of the children's private schools."

The father left South Florida in May, 2000, leaving the children with the mother and without notice. The evidence demonstrates that it was the father's intent to have the children make their primary residence with the Former Wife when he moved to Washington. Based on the evidence, the father attempted to use custody of the children as a bargaining chip to relieve himself of the financial obligations he bargained for in the Marital Settlement Agreement.

Additionally, the Marital Settlement Agreement provides for the father's relocation out of the State of Florida.

> If the minor children's primary physical residence is with the mother and the father should move out of the South Florida area, so that husband cannot share in the day to day care of the children, husband shall pay to the wife not less than the sum of $4,000 per month for all three children (or divided into third (1/3) for each child until the completion of their individual college educations) as child support in addition to all of husband's other obligations herein recited. Regardless of any other provision herein the support paid (or value thereof) by husband shall not be less in value than set forth in the guidelines.

As there was a Marital Settlement Agreement, the first issue the court should address in determining custody of these children is whether the Agreement of the parties addressed the issue. The court finds that the clauses noted above clearly reflect the intention of the parties. The Court finds that the original intent of the parties was that the children would reside with the father, who would live near the schools. This was clearly done for the educational benefit of the children and the convenience of the parties. If the father was to move out of South Florida, the intent was that the children would reside with the mother and the father would pay support. It was a self-executing clause, as evidenced further by paragraph 3 of the agreement. "It is the agreement of the parties that the care, health, education and future of their children is primary among their concerns, and that the children **remain at the current educational institutions** . . ." (Emphasis added.) The court will enforce the agreement. Pursuant to the Marital Settlement Agreement, custody of the two minor children shall be with Mrs. Sibley.

This Court also finds that it is in the best interests of the children that custody be with the Former Wife.

The evidence shows that initially the Former Husband was a fine and caring father. Unfortunately, the Former's [sic] Husband's relationship with his children from this marriage declined when he remarried. This Court took testimony for several days that showed the difficulties of the relationship of the Former Husband and his older children. The Former Wife has had court ordered primary physical residence of the oldest child, MARGARET HARPER SIBLEY (Maggie), since March 26, 1999. There is no communication between Maggie and the

Former Husband. Maggie is in therapy and on medication due to the trauma of the divorce.

Liza, the middle child, was in a private boarding school during the 2001-2002 school year, minutes from the Former Husband's current residence. He did not visit her.

Monty, the youngest child, refuses to speak with his father and refused to be in the same room as his father. The last visitation occurred Christmas time 2000. Monty had to be persuaded by the Guardian ad Litem to get on the airplane. The trip proved to be a disaster. Monty and Liza brought Christmas presents for their father, stepmother and half brother, Sasha. They did not receive any Christmas presents. Mr. Sibley testified that he considered the tickets to fly to see him to be their presents, although he did not tell the children that in advance of their visit. Sasha, Mr. Sibley's son with his current wife, received numerous presents and opened them in the presence of Monty and Liza. Mr. Sibley did not spend any time alone with Monty and Liza. The children were deprived of the individual attention of their father.

Additionally, Monty and Liza slept on the floor. They were expected to baby sit Sasha for part of the visit. Mr. Sibley did not spend any quality time with Monty and Liza. Prior to Mr. Sibley allowing them vacation time, Monty and Liza were forced to sit and write letters to their father to explain what was happening in their lives. This is one of the many examples of a lack of meaningful communication. There was no attempt to have a conversation.

After this visit, there has been no contact between Monty and his father. Mr. Sibley testified that he sent Monty a book for his birthday. Monty did not send him a

thank you note. As Monty did not behave in an acceptable manner, Mr. Sibley does not wish to contact Monty until he apologizes. Mr. Sibley testified that he was willing to sacrifice his relationship with his son over a principle.

Mr. Sibley's relationship with Liza is also strained. As noted earlier, he did not visit her when she was attending school minutes away. There was testimony that there was a birthday dinner for Sasha, a toddler, with the family china and good silver, and presents, while Liza's birthday, during the same period was ignored.

There was also testimony that there were two different categories of food in the refrigerator. There was the food that only Mr. Sibley, his new wife and Sasha could eat, and there was the food that Liza and Monty were allowed to eat. This court can not help but think of the Cinderella fairy tale. The overwhelming evidence reveals that these children were emotionally abused by Mr. Sibley.

Mr. Sibley has also failed to make arrangements for the payment of the children's education. Paragraph 6 of the Marital Settlement agreement states "Husband shall be responsible for, pay for and or arrange to pay for all education expenses of the children while and until they achieve a college degree." The paternal grandfather had historically paid for their education, as he does for most of his other grandchildren. The grandfather testified that he did not want Barbara Sibley to benefit from his paying for the children's education. The education benefits the children, not Barbara Sibley. The children suffer as a result of the hostility directed toward the mother and the failure to fund their educations. Mr. Sibley breached the Marital Settlement Agreement by failing to arrange for the payment of the children's education. He has not only

failed to do so, he has interfered with the paternal grandfather's funding of the education.

The evidence and the course of conduct by Mr. Sibley with his children, convinces this Court that in great measure, Mr. Sibley's insistence on being primary residential parent has much more to do with money and the children's trust funds that his love for his children. It has more to do with a punishment of Barbara Sibley than the concern for the best interests of the children. His positions have been inconsistent. In a letter dated June 8, 2000 to Barbara Sibley, (Petitioner's exhibit C), he wrote "As to Liza, what purpose is served by transferring custody of her to you if she is going to be at Madeira for the next four years anyhow?" On May 9, 2001 he wrote, "I continue to object to Liza attending Madeira . . . " (Respondent's AA2).

Mr. Sibley seeks to use the older children as pawns in the game against Barbara Sibley or in an attempt to relieve himself of the financial obligations pursuant to the Marital Settlement Agreement. His attempt to litigate everything to death is due to Mr. Sibley's disinclination to pay child support and his need to exercise control over his children's lives and material wealth. If it were not so, he would have made the necessary contacts to continue his relationships with his older children, balancing their needs in some fashion, with the needs of his new family. Further evidence of using the children as pawns to avoid payment of child support is his letter to Barbara Sibley stating that he will continue to litigate until he is disbarred or she is bankrupt. This is not the behavior of someone, who has the best interest of the children at heart.

Instead, Mr. Sibley has made no effectuate court ordered preconditions to visiting his children. He has not seen his children for approximately 18 months since they returned from a court ordered visitation in January, 2001. Whatever relationship they had prior to his moving away, which was already in disrepair, since the time that he remarried, has been ruptured, perhaps beyond repair. In actuality, Mr. Sibley has not taken any interest in the two minor children's health, education or welfare since he left Florida more than two years ago. His only interest in education is to insist that the children go to public school, so he will not have to pay for their education. He has not paid any child support. He has litigated every issue and filed numerous frivolous motions and lawsuits. He has treated these children as objects to be negotiated, rather than children with emotions and needs.

WHEREFORE, IT IS ORDERED AND ADJUDGED that:

1. The Former Wife's Petition for Modification of Primary Physical Residence, and Designation of Sole Responsibility as to the Minor Children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR., and Enforcement of the Final Judgment of Dissolution of Marriage is hereby GRANTED. The Former Wife shall be the primary residential parent of the children, ELIZABETH MASON SIBLEY and MONTGOMERY BLAIR SIBLEY, JR.

2. The Former Wife, BARBARA SIBLEY, shall have sole parental responsibility of the minor children, as sole parental responsibility is in the minor children's best interest. The Former Wife shall continue to inform the

Former Husband of all major issues regarding the children's health, education and welfare.

3. The Former Husband owes to the Former Wife the sum of $100,000 ($4,000.00 per month from June, 2000 through June 2002) as arrears for child support pursuant to the parties' Marital Settlement Agreement and Final Judgement. A Final Judgment shall be entered for said arrears. The issue of contempt is addressed by separate order.

4. The Court reserves jurisdiction on the Former Wife's request for attorney's fees and costs, DONE AND ORDERED in Miami-Dade County, Florida, this 9 day of August, 2002.

/s/ Maxine C. Lando
Maxine Lando
Circuit Court Judge

Copies furnished to:
Bette Ellen Quiat, Esq.
Montgomery Blair Sibley
Dirk Lorenzen, Esq.

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION AND,
IF FILED, DISPOSED OF.

IN THE DISTRICT COURT
OF APPEAL

OF FLORIDA

THIRD DISTRICT

JULY TERM, 2003

MONTGOMERY BLAIR SIBLEY,	**	
	**	
Appellant,	**	CASE NO. 3D02-2308
	**	
vs.	**	Lower Tribunal No. 94-18177
	**	
BARBARA SIBLEY,	**	
	**	
Appellee.	**	

Opinion filed December, 3, 2003.

An Appeal from the Circuit Court for Dade County, Maxine Cohen Lando, Judge.

Montgomery Blair Sibley, in proper person.

Jay M. Levy; Bette Ellen Quiat, for appellee.

Caruana & Lorenzen and Dirk Lorenzen, for children.

Before COPE, LEVY, and SHEVIN, JJ.

PER CURIAM.

Affirmed.